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Federal Register

Monday
September 9, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks
Defense Department

Bridges
Coast Guard

Credit Unions
Defense Department

Crop Insurance
Federal Crop Insurance Corporation

Education
Veterans Administration

Employee Benefit Plans
Pension Benefit Guaranty Corporation

Hazardous Waste
Coast Guard

Income Taxes
Internal Revenue Service

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Commodity Credit Corporation

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Selected Subjects

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Agricultural Marketing Service

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Coast Guard

Motor Vehicle Pollution
Environmental Protection Agency

Old-age, Survivors and Disability Insurance
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Pesticides and Pests
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Presidential Documents

Title 3—

The President

Memorandum of September 5, 1985

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625, 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 11, 1984 (49 FR 35927), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1985.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1986, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 5, 1985.

[FR Doc. 85-21640
Filed 9-6-85; 10:46 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of August 7, 1985

Delegation of Authority Under the Cargo Preference Act

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo Preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 7, 1985.

cc: The Secretary of State

[FR Doc. 85-21675
Filed 9-6-85; 12:45 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

Kiwifruit Grown in California; Grade, Size, Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes minimum grade, size, pack, and container requirements pursuant to the marketing order for kiwifruit grown in California. The regulation is designed to provide for orderly marketing of kiwifruit for the benefit of producers and consumers.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated as a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this section will not have a significant economic impact on a substantial number of small entities.

A notice was published in the **Federal Register** on July 2, 1985, (50 FR 27288), containing proposed grade, size, pack and container requirements for fresh shipments of California kiwifruit. That proposed rule provided interested persons an opportunity to file comments through August 1, 1985. A notice of an extension of the period for filing comments to August 7, 1985, was published in the **Federal Register** on August 5, 1985 (50 FR 31635). A total of 110 comments were filed.

Persons filing comments opposed to the proposed grade and size requirements indicated that such requirements are not needed and are not adequately justified, would restrict shipment of lower quality kiwifruit and misshapen fruit, i.e. "wides" and "fans" and smaller sizes of kiwifruit. Several comments indicated that the proposed requirements could eliminate 3 to 30 percent of the kiwifruit crop from being shipped in fresh market channels. Other comments suggested that the proposals would restrict market expansion, adversely affect small growers, and result in the destruction of edible fruit.

Information indicates that about 8 percent of the 1985–86 California kiwifruit crop may not meet specified minimum quality requirements. Individual growers may have differing amounts of their kiwifruit crop which would not meet specified quality requirements depending on cultural practices employed and other factors. However, kiwifruit which does not meet these requirements may be handled exempt from regulations if it is designated for use by charitable institutions, distributed by relief agencies, commercially processed into products, or handled to outlets specified under § 920.110. Thus, the regulation should not result in the elimination of marketable kiwifruit.

The majority of those persons regulated under the order are considered to be small entities and regulations issued under the order are uniformly applied to all such entities. These regulations may be modified upon recommendation of the committee and approval of the Department to recognize changed crop or market conditions for kiwifruit.

Comments filed in favor of the proposed requirements indicated that minimum quality requirements are needed to expand the market for California kiwifruit. Shipment of lower quality and smaller sizes of kiwifruit adversely affects prices for better quality and preferred sizes of kiwifruit and may result in consumer dissatisfaction and reduced purchases of kiwifruit. Other comments indicated that the proposed requirements would not substantially reduce the volume of the crop for market.

The KAC filed a comment indicating that while the proposed minimum size 49 should be defined in the rule in terms of the number of kiwifruit in an 8-pound sample, the regulation should not define sizes 30, 33, 36, and 39 in such terms because of uncertainty as to the acceptable number of kiwifruit in an 8-pound sample and variations in the weight of kiwifruit which may occur during the season. As an alternative, KAC suggested that these size designations be determined by the Federal or Federal-State Inspection Service. The comment also suggested that the regulation should reference § 51.2338 of the U.S. Standards for Grades of Kiwifruit which specifies standard pack requirements rather than citing the provisions in that section.

The size designations 30, 33, 36, and 39 are defined to clearly indicate the basis for ascertaining that these sizes meet the "fairly uniform in size" requirements in § 920.302(a)(3). The committee may recommend and the Secretary may approve changes to these sizes if substantial evidence is shown that there is a need for such a change. In order to assure clarity, the rule retains the detail as to applicable standard pack requirements in lieu of a reference to the section of the U.S. Standards for Grades of Kiwifruit containing standard pack requirements, as suggested by the committee. Thus, the changes submitted by KAC with respect to this issue are not adopted.

Based on comments received, the recommendations and information submitted by the committee and other available information, it is determined that minimum grade, size, pack, and container requirements should be made applicable to fresh shipments of California kiwifruit to promote orderly marketing of the 1985–86 crop.

The final rule is issued under the marketing agreement and Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the act.

The 1985–86 California Kiwifruit crop is estimated by the committee at 5.2 million trays or tray equivalents (approximately 39 million pounds) compared to last year's crop of 4.265

millions trays or tray equivalents (approximately 31.99 million pounds).

The marketing order for California kiwifruit became effective on October 12, 1984, and was based on evidence that establishment of minimum quality and other regulations would promote orderly marketing of California kiwifruit. The minimum grade, size, pack and container requirements specified in this rule implement authorization for regulation of shipments of kiwifruit contained in the marketing order.

The KAC reported that the lack of grade and size regulations last year resulted in numerous complaints from consumers and wholesale buyers that the quality of the California kiwifruit crop was poor. The committee concluded that this situation reduced buyer confidence in California kiwi-fruit and may have contributed to lower f.o.b. prices. The specification of minimum grade and size requirements should provide for a consistent supply of good quality kiwifruit and are necessary to improve wholesale buyer and consumer confidence during the 1985–86 season.

Pursuant to § 920.52, § 920.302 would specify that kiwifruit must grade at least 85 percent U.S. No. 2, and be at least size 49 (size 49 means that an eight pound sample, representative of this size in the package or container, does not contain more than 64 pieces of fruit). The pack requirements would require that size 30 or larger cannot vary more than ½ inch in diameter, sizes 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter. Lot stamping of containers would be required for all shipments, except those being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

Section 920.110 of the regulations under the order exempts the handling of kiwifruit under certain conditions from specified provisions of the order and the regulations. This exemption would apply to the requirements established herein privided that: (1) The net weight of such kiwifruit sold to any one person during any one day does not exceed 200 pounds; (2) the kiwifruit are for home use and not for resale; and (3) the kiwifruit are handled by the person who produced them and, the handling takes place on the premises where grown, at a packinghouse, retail stand, or any other outlet approved by the committee which is operated by said handler, or at a Certified Farmers Market.

It is found that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because interested persons were given an opportunity to submit information and views on the requirements specified in this rule and no useful purpose would be served by delaying the effective date of this rule. Prompt implementation of this rule is necessary to effectuate the purpose of the act. California kiwifruit growers have been apprised of the provisions of this rule. This final rule is the same as the proposed rule except for the later effective date and minor, editorial changes for clarity.

List of Subjects in 7 CFR Part 920

Marketing agreements and Orders, Kiwifruit, California.

PART 920—[AMENDED]

1. The Authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. New § 920.302 is added to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) On and after September 9, 1985, no handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(1) *Grade Requirements.* Fresh shipments of kiwifruit shall grade a least 85 percent U.S. No. 2: *Provided,* That no more than 8 percent be allowed for defects other than badly misshapen fruit.

(2) *Size Requirements.* Such kiwifruit are a minimum size 49 (size 49 means that an eight-pound sample representative of this size in the package or container, contains not more than 64 pieces of fruit: *Provided,* That size 30, 33, 36, and 39 mean that an eight-pound sampler representative of these sizes in a package or container, contains not more than 34, 37, 41, and 46 pieces of fruit, respectively.

(3) *Pack Requirements.* Such kiwifruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, cartons or any other containers and arranged according to approved and recognized methods. Containers shall be well filled; contents tightly packed but not be excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents. When packed in closed containers the size shall be indicated by marking the container with the numerical count. Fruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count. For the purposes of this section, "fairly uniform in size" means that size 30 or larger cannot vary more than ½ inch in diameter, sizes 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter: *Provided,* That volume fill containers are exempt from numerical count markings on containers: *Provided further,* That "diameter" means the greatest dimension measured at right angles to a line from stem to blossom end: and *Provided further,* That not more than 10 percent, by count, of containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet these requirements.

(4) *Container Requirements.* Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(b) The term "U.S. No. 2" means the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

Dated: September 4, 1965.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–21395 Filed 9–6–65; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 4.]

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR 1427.1061 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The final rule will: (1) require non-federally licensed warehousemen requesting renewal of an existing Cotton Storage Agreement (CSA) to pay fees to CCC to partially defray warehouse examination costs incurred by CCC in determining

whether to renew the CSA; and (2) require non-federally licensed warehousemen requesting approval of a new CSA to pay fees to partially defray warehouse examination costs incurred by CCC in determining whether to approve such new CSA.

EFFECTIVE DATE: September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5962-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 382-8053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since it does not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The information collection requirements contained in this regulation (7 CFR Part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714 et seq.) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the CCC's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce. Pursuant to these provisions, CCC enters into Cotton Storage Agreements (CSA) with private warehousemen which provide for the storage of commodities owned by CCC or pledged as security to CCC for a price support loan.

CCC examines all warehouses which are subject to a CSA, or for which a warehouseman has requested approval of a new CSA, to determine whether quantities of CCC-owned cotton, CCC loan cotton, and other depositors' cotton are totally accounted for and whether the warehouse will provide adequate protection for all cotton in storage and all cotton to be placed in storage. CCC now pays all examination costs with respect to those warehouses which are not licensed under the U.S. Warehouse Act but for which there is a request by the warehouseman for renewal of an existing CSA or for approval of a new CSA. If the warehouse examination discloses that (1) all cotton is accounted for, (2) the facility provides or will provide adequate protection for all cotton and (3) the warehousemen and warehouse meet the financial and other requirements of the Standards for Approval, an existing CSA may be renewed or a new CSA may be approved for the warehouse. Since the warehouseman also derives a direct benefit from warehouse examination, it has been determined that the warehouseman should pay a portion of the examination costs.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on July 22, 1985, 50 FR 29693, requesting comments with respect to an amendment of the Standards for Approval of Warehouses for Cotton and Cotton Linters. The comment period was for thirty days and ended on August 21, 1985.

Amendments to the regulations were proposed which would require each warehouseman who has a non-federally licensed cotton warehouse and who is requesting renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement to pay an annual contract fee for each such warehouse in order to partially defray the cost of the warehouse examination.

No comment were received concerning the proposed rule. Accordingly, it has been determined that the provisions of the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—Cotton Price Support Programs, Cotton storage.

Final Rule

Accordingly, the regulations at 7 CFR Part 1427, Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters, are amended as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR Part 1427, Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters, reads as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

§ 1427.1088 [Redesignated as § 1427.1089]

2. Section 1427.1088 is redesignated as § 1427.1089.

3. A new § 1427.1088 is added immediately following § 1427.1087 to read as follows:

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior

to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the **Federal Register.**

Signed at Washington, D.C. on September 4, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-21394 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-44-AD; Amdt. 39-5137]

Airworthiness Directives; McDonnell Douglas Model DC-9, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1248

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, and repair, if necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC-9 series airplanes. This action is prompted by reports of cracks in the upper anticollision light doubler, the failure of which could result in significant damage to the adjacent structure and cause the subsequent loss of cabin structural integrity.

DATES: Effective October 14, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection and repair, as necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on May 15, 1985 (50 FR 20225). The comment period for the proposal closed July 8, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

The first commenter suggested that the FAA consider Condition III of McDonnell Douglas DC-9 Service Bulletin 53-186 as an alternative repair method for cracks found less than one inch long (Condition II). The FAA concurs that Condition III will provide the necessary equivalent level of safety, for Condition II repairs (i.e. cracks less than 1 inch). This option, therefore, has been incorporated into the final rule.

The second and third commenters recommended that paragraph B. of the NPRM be revised to include the installation of an external doubler as an alternate method of complying with Condition I, Phase II. After reviewing additional data received from McDonnell Douglas Corporation, the FAA has determined that this is a viable alternative method for complying with Condition I, Phase II. This alternative method has also been incorporated into the final rule.

The fourth commenter suggested that the one year repetitive inspection interval of paragraph B. of the NPRM be expressed in landings (cycles). The FAA concurs after reviewing additional data received from McDonnell Douglas Corporation, and the amendment, as adopted, incorporates this change.

It is estimated that 548 airplanes of U.S. registry will be affected by this AD. It will take approximately four man-hours per airplane to accomplish the required inspections, and ten man-hours per airplane to accomplish the required repairs. The average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $306,880.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1248, certificated in any category, with more than 30,000 landings. Compliance required as indicated, unless previously accomplished.

A. Within the next 1,600 landings after the effective date of this AD, inspect the skin and doublers around the upper anticollision light cutout for cracks in accordance with McDonnell Douglas Service Bulletin 53-186, dated April 17, 1985 (hereinafter referred to as SB 53-186), Figure 2, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found under Condition I, Phase I, as referenced in SB 53-186, perform repetitive eddy current inspections at intervals not to exceed 3,500 landings in accordance with Figure 2, of SB 53-186, until such time as stress coining of plate nut clearance holes, as outlined under Condition I, Phase II,* is accomplished.

C. If cracks are found, before further flight:

1. For cracks less than 1.00 inch long, repair cracked area in accordance with Condition II or III of the Accomplishment Instructions in SB 53-186, or SB 09531086 (originally identified as McDonnell Douglas DC-9 Service Sketch 3628C).

2. For cracks 1.00 to 1.25 inches long, repair cracked area in accordance with Condition III of the Accomplishment Instructions in SB 53-186, or SB 09531086.

3. For cracks greater than 1.25 inches, repair in accordance with data approved by the Manager, Los Angeles Aircraft

* NOTE: Accomplishment of Phase II, eliminates the requirements for Phase I repetitive inspections.

Certification Office, FAA, Northwest Mountain Region.

D. Terminating Action. Completion of the Accomplishment Instructions of SB 53-188, or SB 09531066, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for this AD.

E. Alternative inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 14, 1985.

Issued in Seattle, Washington, on August 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21368 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM84-6-015 through 032]

Refunds Resulting From Btu Measurement Adjustments

August 28, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Denial of requests for stay.

SUMMARY: The Federal Energy Regulatory Commission is giving notice that it is denying requests for stay and not acting on requests for rehearing of Order No. 399-B, relating to refunds resulting from Btu measurement adjustments, issued July 18, 1985, 50 FR 30141 (July 24, 1985).

EFFECTIVE DATE: August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9115.

SUPPLEMENTARY INFORMATION: On July 26, 1985, Mesa Petroleum Company, on August 9, 1985, Phillips Petroleum Company, and on August 19, 1985, Pitts Oil Company, *et al.*, and Mobil Oil Corporation, *et al.*, requested rehearing and petitioned for a stay of Commission Order No. 399-B, issued July 18, 1985, in the above-entitled proceeding, 50 FR 30141 (July 24, 1985). The Commission denies the requests for a stay because it does not believe justice requires that Order No. 399-B be stayed. 5 U.S.C. 705 (1982). In addition, the Commission will not act further upon these requests for rehearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21398 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 157

[Docket Nos. RM81-19-024 and RM81-29-019]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

August 16, 1985.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice of Denial of Petition for Rehearing.

SUMMARY: On July 18, 1985, a petition for rehearing was filed by the Interstate Natural Gas Association of America on the final rule in this proceeding relating to interstate pipeline blanket certificates for routine transactions and sales and transportation by interstate pipelines and distributors. The Commission has decided to deny the petition by not acting on it.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTAL INFORMATION: On July 17, 1985, the Interstate Natural Gas Association of America requested rehearing of the Commission's final rule issued June 17, 1985, 50 FR 25701 (June 21, 1985). The Commission has decided to deny this request pursuant to section 19(a) of the Natural Gas Act by not acting upon it.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21400 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Coverage of Employees of Private Nonprofit Organizations, Work Outside United States, Etc.

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These rules implement sections 102, 321, 322, and 323 of Pub. L. 98-21 (the Social Security Amendments of 1983). Generally, these provisions: (1) Mandatorily cover for Social Security purposes employees of private nonprofit organizations; (2) Provide additional Social Security coverage for certain work performed outside the United States (U.S.); (3) Provide coverage under the Social Security program for certain foreign earned income; (4) Provide special Social Security insured status requirements for certain nonprofit organization employees covered as a result of these amendments; and (5) Provide Social Security coverage for employment and self-employment that is identified as "covered" for purposes of title II of the Social Security Act (the Act) by the provisions of a totalization agreement between the U.S. and another country. We published a Notice of Proposed Rulemaking on April 6, 1984 (49 FR 13710). No comments were received.

These regulations also implement section 2603 of Pub. L. 98-369 (the Deficit Reduction Act of 1984) which was enacted subsequent to publication of the Notice of Proposed Rulemaking. Section 2603 permits certain churches and church-controlled organizations, opposed to the payment of Social Security employment tax for religious reasons, to elect to exclude from Social Security coverage as employment, services of their employees performed after 1983. The excluded services are considered to be self-employment for Social Security purposes. Since this provision modifies section 102 of Pub. L. 98-21 we are including regulations reflecting this provision as final rules without a prior Notice of Proposed

Rulemaking but with an opportunity for public comment.

DATES: These rules are effective (insert date of publication), but the statutory changes which the regulations reflect were effective on earlier dates. Because the rules implementing section 2603 of Pub. L. 98–369 were not included in the Notice of Proposed Rulemaking we will consider any comments concerning that provision (§§404.1025(a), 404.1026, 404.1068 (a) and (f), 404.1080(a), and 404.1096(c)(1)) that we received by November 8, 1985 and will revise such rules later if public comment warrants.

ADDRESS: Send comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland, 21203; or deliver to the Office of Regulations, Social Security Administration, 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland, 21235.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7460.

SUPPLEMENTARY INFORMATION:

Coverage of Employees of Private Nonprofit Organizations

Beginning January 1, 1984, employees of private nonprofit organizations are mandatorily covered by Social Security. Any remuneration paid to such employees on or after that date may be subject to the Social Security tax. Under prior law employees of such organizations were exempt from Social Security coverage (and taxes) but an organization could voluntarily waive the exemption to provide coverage for its employees. Termination of a waiver was possible under prior law but on or after March 31, 1983, termination is prohibited. Special requirements for fully insured status are provided for certain employees covered solely as a result of this provision.

These regulations differ from those set forth in the Notice of Proposed Rulemaking to the extent that they reflect the clear provisions of section 2603 of Pub. L. 98–369, which affected section 102 of Pub. L. 98–21. Section 2603 provides that certain church and church-controlled organizations may elect to have the services of their employees excluded from Social Security coverage as employment beginning January 1, 1984. Services of employees so excluded are considered to be self-employment for Social Security purposes. These regulations do not reflect any exercise of discretion or administrative policy choices. They simply reflect the clear provisions of section 2603 of Pub. L. 98–369 which affect section 102 of Pub. L. 98–21. They do not grant or deny rights which do not exist under the statute. Therefore, there is good cause for finding that prior notice and opportunity for comment under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) is unnecessary. In addition, prior notice and comment would be impracticable and contrary to the public interest. It would be impracticable for us to publish a final regulation providing mandatory Social Security coverage of employees of private nonprofit organizations without publishing at the same time the provision permitting an exclusion from such coverage. Prior notice and comment would be contrary to the public interest in that delaying the regulations implementing section 2603 would delay final publication of the regulations in the April 6 Notice of Proposed Rulemaking and existing regulations would be out of date for an unreasonable period of time.

Coverage of Employees of Foreign Affiliates of American Employers

These regulations implement section 321 of Pub. L. 98–21. Under this provision any American employer (corporation, sole proprietorship or partnership) may provide Social Security coverage for U.S. citizens and U.S. residents working outside the U.S. for a foreign affiliate when the American employer has not less than 10 percent direct or indirect interest in the affiliate. In order to provide Social Security coverage, the American employer must enter into an agreement with the Secretary of the Treasury. Prior law required that for Social Security coverage purposes both the American employer and its affiliate be corporations.

Coverage Under Totalization Agreements

These regulations implement section 322 of Pub. L. 98–21 which provides Social Security coverage under sections 210 and 211 of the Act for services identified as covered employment or self-employment under title II of the Act by an agreement between the U.S. and another country pursuant to section 233 of the Act. The Internal Revenue Code of 1954 (the Code) was also amended to provide for Social Security taxes on wages and self-employment income derived from such services. These provisions were inadvertently omitted in Pub. L. 95–216 which added section 233 to the Act.

Treatment of Certain Services Performed Outside the U.S.

These regulations implement section 323 of Pub. L. 98–21 by eliminating the foreign earned income exclusion with regard to net earnings from self-employment, derived by U.S. citizens and residents who reside in foreign countries, for taxable years beginning after December 31, 1983. For Social Security purposes, provision is made for crediting earned income as net earnings from self-employment for taxable years beginning after December 31, 1981 and before January 1, 1984. Prior law provided that earned income derived by U.S. citizens and residents who are "present in a foreign country" was subject to Social Security tax but there was no provision for crediting it for other Social Security purposes. Section 323 also provides Social Security coverage for U.S. residents who work outside the U.S. for American employers.

We made a minor change in § 404.1091 by changing the description of section 911 of the Code because of recent amendments to section 911.

Regulatory Procedures

Executive Order 12291

These rules merely conform the existing rules to the changes legislated by Pub. L. 98–21 and Pub. L. 98–369. The resulting cost impact is due to the legislation, and since the Secretary has no discretion in implementing the statutory requirements, the Office of Management and Budget has granted a waiver from the requirement to conduct a regulatory impact analysis.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect the Social Security coverage of individuals. Any impact on small entities would result from the statutory provisions. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors, and Disability insurance.

Dated: May 8, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

For the reasons set out in the preamble, Part 404 of Chapter III of Title 20, Code of Federal Regulations, is amended as follows:

Subpart B—Insured Status and Quarters of Coverage

1. The authority citation for Subpart B continues to read as follows:

Authority: Secs. 205, 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 53 Stat. 1368, 64 Stat. 504 and 505, 68 Stat. 1080, 64 Stat. 512, 70 Stat. 815, and 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953; 67 Stat. 631; 42 U.S.C. 405, 412, 413, 414, 416, 417, 423, and 1302; 5 U.S.C. Appendix.

2. In § 404.110, paragraph (a) is revised to read as follows:

§ 404.110 How we determine fully insured status.

(a) *General.* We describe how we determine the number of quarters of coverage (QCs) you need to be fully insured in paragraphs (b), (c), and (d) of this section. The table in § 404.115 may be used to determine the number of QCs you need to be fully insured under paragraph (b) of this section. We consider certain World War II veterans to have died fully insured (see § 404.111). We also consider certain employees of private nonprofit organizations to be fully insured if they meet special requirements (see § 404.112).

* * * * *

3. A new § 404.112 is added to read as follows:

§ 404.112 When we consider certain employees of private nonprofit organiations to be fully insured.

If you are age 55 or over on January 1, 1984, and are on that date an employee of an organization described in § 404.1025(a) which does not have in effect a waiver certificate under section 3121(k) of the Code on that date and whose employees are mandatorily covered as a result of section 102 of Pub. L. 98–21, we consider you to be fully insured if you meet the following requirements:

Your age on January 1, 1984 is—	QC's acquired after Dec. 31, 1983
60 or over	6
59 or over but less than age 60	8
58 or over but less than age 59	12
57 or over but less than age 58	16
55 or over but less than age 57	20

Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income

4. The authority citation for Subpart K continues to read as follows:

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act; 53 Stat. 1368, 49 Stat. 625, 64 Stat. 492, 81 Stat. 833, 86 Stat. 416, 86 Stat. 1367, 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 409, 410, 411, 429, 430, 431, and 1302; 5 U.S.C. appendix.

5. Section 404.1004 is amended by revising paragraphs (a)(2), adding paragraph (a)(4), revising paragraph (b)(5), removing the present text of paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), (b)(9) and (b)(10) as (b)(6), (b)(7), (b)(8) and (b)(9), respectively, to read as follows. The text of newly designated paragraphs (b)(6)–(b)(9) is not changed as is shown for reader convenience only.

§ 404.1004 What work is covered as employment.

(a) * * *

(2) You perform the work outside the United States and you are a citizen or resident of the United States working for—

(i) An American employer; or

(ii) A foreign affiliate of an American employer than has in effect an agreement covering your work under section 3121(l) of the Code.

* * * * *

(4) Your work is designated as employment or recognized as equivalent to employment under a totalization agreement. (See § 404.1913. An agreement may exempt work from coverage as well as extend coverage to work.)

(b) * * *

(5) "Foreign affiliate" refers to a foreign affiliate as defined in section 3121(l)(8) of the Code.

(6) "On and in connection with" refers to the performance of work on a vessel or aircraft which concerns the vessel or aircraft. Examples of this kind of work are the services performed on a vessel by employees as officers or crew members, or as employees of concessionaires, of the vessel.

(7) "On or in connection with" refers to work performed on the vessel or aircraft and to work which concerns the vessel or aircraft but not actually performed on it. For example, shore services in connection with repairing, loading, unloading, or provisioning a vessel performed by employees as offices or crew members, or as employees of concessionaires, of the vessel are included, since this work concerns the vessel though not performed on it.

(8) "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(9) "United States" when used in a geographical sense means the 50 States, the District of Columbia the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 404.1026 [Redesignated as § 404.1025]

6. Section 404.1026 is redesignated as § 404.1025 and revised to read as follows:

§ 404.1025 Work for religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *After 1983.* Work done after 1983 by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code is covered as employment unless the work is for a church or church-controlled organization that has elected to have services performed by its employees excluded (see § 404.1026). (See § 404.1059(b) for special wage rule.)

(b) *Before 1984.* Work described in paragraph (a) of this section which was done before 1984 is excluded from employment. However, the exclusion does not apply to work done during the period for which a form SS–15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, was filed (or was deemed to have been filed) with the Internal Revenue Service.

7. A new § 404.1026 is added to read as follows:

§ 404.1026 Work for a church or qualified church-controlled organization.

(a) *General.* If you work for a church or qualified church-controlled organization, as described in this section, your employer may elect to have your services excluded from employment. You would then be considered to be self-employed (see § 404.1068(f)). The employer's election of the exclusion must be made with the

Internal Revenue Service in accordance with Internal Revenue Service procedures and must state that the church or church-controlled organization is opposed for religious reasons to the payment of Social Security employment taxes. The exclusion applies to current and future employees. If you work in an unrelated trade or business (within the meaning of section 513(a) of the Code) of the church or church-controlled organization the exclusion does not apply to your services.

(b) *What is a church.* For purposes of this section the term "church" means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(c) *What is a qualified church-controlled organization.* For purposes of this section the term "qualified church-controlled organization" means any church-controlled organization exempt from income tax under section 501(c)(3) of the Code but does *not* include an organization which:

(1) Offers goods, services, or facilities for sale to the general public, other than on an incidental basis, or for other than a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(2) Normally receives more than 25 percent of its support from either governmental sources or receipts from admissions, sales of merchandise, performance of services or furnishing of facilities other than in an unrelated trade or business, or both.

8. Section 404.1065 is revised to read as follows:

§ 404.1065 Self-employment coverage.

For an individual to have a self-employment coverage under Social Security, the individual must be engaged in a trade or business and have net earnings from self-employment that can be counted as self-employment income for Social Security purposes. The rules explaining whether you are engaged in a trade or business are in §§ 404.1066–404.1077. What are net earnings from self-employment is discussed in §§ 404.1080–1095. Section 404.1096 describes the net earnings from self-employment that are counted as self-employment income for Social Security purposes. See § 404.1913 for the effect of a totalization agreement on self-employment coverage. An agreement may exempt an activity from coverage as well as extend coverage to an activity.

9. In § 404.1068, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 404.1068 Employees who are considered self-employed.

(a) *General.* Although we generally exclude services performed by employees from the definition of trade or business, certain types of services are considered a trade or business even though performed by employees. If you perform any of the services described in paragraphs (b) through (f) of this section, you are self-employed for Social Security purposes. Certain other services described in § 404.1071 (relating to ministers and members of religious orders) and § 404.1073 (relating to certain public officers) may be considered a trade or business even though performed by employees.

* * * * *

(f) *Employees of church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your net earnings from self-employment (§ 404.1080) you may not deduct any expenses attributable to your work.

10. In § 404.1080, paragraph (a) introductory text is revised to read as follows:

§ 404.1080 Net earnings from self-employment.

(a) *Definition of net earnings from self-employment.* If you are self-employed, you must first determine the amount of your net earnings from self-employment before figuring the amount of your earnings that count for social security purposes. Some of your earnings may not be included as net earnings from self-employment even though they are taxable for income tax purposes. If you are an employee but we consider you to be self-employed for Social Security purposes, you must figure your earnings as though you were actually self-employed unless you work for a church or church-controlled organization that has exempted its employees (see § 404.1068(f)). Subject to the special rules in §§ 404.1081 through 404.1095, the term "net earnings from self-employment" means—

* * * * *

11. In § 404.1081, paragraph (a)(4)(iii) is revised to read as follows:

§ 404.1081 General rules for figuring net earnings from self-employment.

(a) * * *

(4) * * *

(iii) You are a United States citizen or resident engaged in a trade or business outside the United States (see § 404.1092); or

* * * * *

12. In § 404.1091, paragraph (c) is revised to read as follows:

§ 404.1091 Figuring net earnings for ministers and members of religious orders.

* * * * *

(c) *Services outside the United States.* If you one are a citizen or resident of the United States performing services outside the United States which are in the exercise of your ministry or in the exercise of duties required by your order, your net earnings from self-employment from the performance of these services are figured as described in paragraph (b) of this section. However, they are figured without regard to the exclusions from gross income provided in sections 911 and 931 of the Code relating to earned income from services performed outside the United States and from sources within possessions of the United States.

13. Section 404.1092 is revised to read as follows:

§ 404.1092 Figuring net earnings for U.S. citizens or residents living outside the United States.

(a) *Taxable years beginning after December 31, 1983.* If you a citizen or resident of the United States and are engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911(a)(1) of the Code.

(b) *Taxable years beginning after December 31, 1981, and before January 1, 1984.* If you are a citizen of the United States and were engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911(a)(1) of the Code unless you are a resident of a foreign country or countries

for an uninterrupted period which includes an entire taxable year.

14. In § 404.1096, paragraphs (c)(1) and (d) are revised to read as follows:

§ 404.1096 Self-employment income.

* * * * *

(c) *Minimum net earnings from self employment.* (1) Self-employment income does not include your net earnings from self-employment when the amount of those earnings for the taxable year is less than $400. If you have only $300 of net earnings from self-employment for the taxable year you would not have any self-employment income. (Special rules apply if you are paid $100 or more and work for a church or church-controlled organization that has exempted its employees (see § 404.1068(f)).)

* * * * *

(d) *Nonresident aliens.* A nonresident alien has self-employment income only if coverage is provided under a totalization agreement [see § 404.1913]. We do not consider an individual who is a resident of the Commonwealth of Puerto Rico, The Virgin Islands, Guam or American Samoa to be a nonresident alien.

15. The authority citation for Subpart T continues to read as follows:

Subpart T—Totalization Agreements

Authority: Secs. 205, 233, and 1102 of the Social Security Act; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; 42 U.S.C. 405, 433, and 1302.

16. In § 404.1913, paragraph (b)(1) is revised to read as follows:

§ 404.1913 Precluding dual coverage.

* * * * *

(b) *Principles for precluding dual coverage.* (1) An agreement precludes dual coverage by assigning responsibility for coverage to the U.S. or a foreign country. An agreement may modify the coverage provisions of title II of the Act to accomplish this purpose. Where an agreement assigns coverage to the foreign country, it may exempt from coverage services otherwise covered by the Act. Where an agreement assigns coverage to the U.S. it may extend coverage to services not otherwise covered by the Act but only for taxable years beginning on or after April 20, 1983.

* * * * *

[FR Doc. 85-21321 Filed 9-6-85; 8:45 am]
BILLING CODE 4190 *1-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8051]

Income Tax; Disallowance of Deductions for Expenditures Incurred With Respect to Facilities Used in Connection With Entertainment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disallowance of deductions for expenditures incurred with respect to facilities, other than clubs, used in connection with entertainment. Changes to the applicable tax law were made by the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations provide the necessary guidance to the public to comply with the law.

DATES: These regulations are effective after December 31, 1978 and apply to expenses paid or incurred after that date.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 274(a) of the Internal Revenue Code of 1954. These amendments conform the regulations to the amendments made to section 274(a) by section 361 of the Revenue Act of 1978 (92 Stat. 2847) and section 103(a)(10) of the Technical Corrections Act of 1979 (94 Stat. 212). These regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

These final regulations amend paragraphs (a)(2) and (e)(1) of § 1.274-2 to deny a deduction for expenditures paid or incurred after December 31, 1978 with respect to a facility, other than a club, used in connection with entertainment. Expenditures paid or incurred with respect to clubs are not affected by the regulations.

On September 26, 1983, proposed regulations were published in the **Federal Register** (48 FR 43698). Only one comment was received in response to the proposed regulations.

The proposed regulations provided that dues or fees paid to any social, athletic, or sporting club, although treated as items with respect to facilities, are deductible if certain tests are met. The commenter suggested that the regulations define the term "club" in order to prevent confusion by taxpayers and tax auditors. This suggestion was not adopted in the final regulations. For purposes of these regulations, the term "club" is given its generally understood meaning.

A public hearing was not requested, and therefore, a public hearing was not held. The proposed regulations are adopted without change by the Treasury decision.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of these regulations is Donald W. Stevenson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 274, as published in the **Federal Register** on September 26, 1983 (48 FR 43698), are hereby adopted without change.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 5, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

PART 26—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.274–2 is amended by revising paragraph (a)(2), by revising paragraph (a)(3)(iii), by revising the heading of paragraph (e), and by revising paragraph (e)(1). The amended and revised provisions read as follows:

§ 1.274–2 Disallowance of deductions for certain expenses for entertainment, amusement, or recreation.

(a) *General rules.* * * *

(2) *Entertainment facilities*—(i) *Expenditures paid or incurred after December 31, 1978, and not with respect to a club.* Except as provided in this section with respect to a club, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure paid or incurred after December 31, 1978, with respect to a facility used in connection with entertainment.

(ii) *Expenditures paid or incurred before January 1, 1979, or with respect to a club.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure paid or incurred before January 1, 1979, with respect to a facility used in connection with entertainment or at any time with respect to a club used in connection with entertainment, unless the taxpayer establishes—

(*a*) That the facility or club was used primarily for the furtherance of the taxpayer's trade or business, and

(*b*) That the expenditure was directly related to the active conduct of that trade or business.

The deduction shall not exceed the portion of the expenditure directly related to the active conduct of the taxpayer's trade or business.

(3) *Cross references.* * * *

(iii) "Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or at any time with respect to clubs", see paragraph (e) of this section, and

* * * * *

(e) *Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or any time with respect to clubs*—(1) *In general.* Any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred at anytime with respect to a club, used in connection with entertainment shall not be allowed as a deduction except to the extent it meets the requirements of paragraph (a)(2)(ii) of this section.

* * * * *

Par. 3. Section 1.274–5(c)(6)(iii) is amended by revising the first two sentences thereof to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(c) *Rules for substantiation.* * * *

(6) *Special rules.* * * *

(iii) *Primary use of a facility.* Section 274(a) (1)(B) and (2)(C) denies a deduction for any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred at any time with respect to a club, used in connection with an entertainment activity unless the taxpayer establishes that the facility (including a club) was used primarily for the furtherance of his trade or business. A determination whether a facility before January 1, 1979, or a club at any time was used primarily for the furtherance of the taxpayer's trade or business will depend upon the facts and circumstances of each case. * * *

* * * * *

Par. 4. Section 1.274–6 is revised to read as follows:

§ 1.274–6 Expenditures deductible without regard to trade or business or other income producing activity.

The provisions of §§ 1.274–1 through 1.274–5, inclusive, do not apply to any deduction allowable to the taxpayer without regard to its connection with the taxpayer's trade or business or other income producing activity. Examples of such items are interest, taxes such as real property taxes, and casualty losses. Thus, if a taxpayer owned a fishing camp, the taxpayer could still deduct mortgage interest and real property taxes in full even if deductions for its use are not allowable under section 274(a) and § 1.274–2. In the case of a taxpayer which is not an individual, the provisions of this section shall be applied as if it were an individual. Thus, if a corporation sustains a casualty loss on an entertainment facility used in its trade or business, it could deduct the loss even though deductions for the use of the facility are not allowable.

Par. 5. Section 1.274–8 is revised to read as follows:

§ 274–8 Effective date.

Except as provided in § 1.274–2 (a) and (e), §§ 1.274–1 through 1.274–7 apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.

[FR Doc. 85–21335 Filed 9–6–85; 8:45am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85–15]

Marine Event; Bluewater Race of Champions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Bluewater Race of Champions. This event will be held on 21 and 22 September 1985 at Parker, Arizona. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on September 21, 1985 and terminate on September 22, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 8 August 1985, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–15) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast

Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

The C.O.B.R.A., "Bluewater Race of Champions" will be conducted from 8:00 am to 5:00 pm on 21 and 22 September 1985 on the Colorado River, Parker, Arizona from Bluewater Marina Park to 100 yards north of Badenochs River Marina. This event will have approximately 100 high speed boats 10 to 18 feet in length that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Mariné safety, Navigation (water).

Regulations:

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended to read as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. A temporary § 100.35 11–85–15 is added to read as follows:

§ 100.35 11–85–15–Bluewater Race of Champions, Parker, Arizona.

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic: that portion of the Arizona side of the Colorado River, Parker, Arizona from Bluewater Marina Park to 100 yards north of Badenochs River Marina.

(b) *Effective Dates:* These regulations will be effective from 8:00 am to 5:00 pm on 21 and 22 September 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta control" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

Dated: August 15, 1985.

A.B. Beran,

Commodore, United States Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85–21453 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Headstone or Marker Allowance

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has increased the monetary allowance payable in lieu of a Government-furnished headstone or marker from $68 to $70. The need for this action resulted from the fact that the average actual cost of a Government-furnished headstone or marker for fiscal year 1984 was $70. The effect of this amendment will be to permit payment of up to $70 in lieu of a Government-furnished headstone or marker.

EFFECTIVE DATE: This change is effective October 1, 1984, the beginning of the current fiscal year.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 20445 and 20446 of the **Federal Register** of May 16, 1985, the Veterans Administration published a proposed amendment to 38 CFR 3.1612. Interested persons were given until June 17, 1985, to submit comments, suggestions or objections to the proposed amendment. Since no comments, suggestions or objections were received, the amendment has been adopted as proposed.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Also, this change simply updates VA regulations to reflect the actual average cost to the VA of headstones and markers in fiscal year 1984. Thererfore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: August 22, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3 *Adjudication,* is amended by revising § 3.1612, paragraph (e)(2)(ii) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.*

* * * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1983 (October 1, 1982 through September 30, 1983) is $68 and for fiscal year 1984

(October 1, 1983 through September 30, 1984) is $70.

(38 U.S.C. 906(d))

* * * * *

[FR Doc. 85-21386 Filed 9-6-85; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Cancellation of Unnecessary Regulations

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is canceling several paragraphs in some sections of its education regulations dealing with the G.I. Bill. These paragraphs are redundant. No purpose is served by repeating the same information in more than one section. In fact, this sometimes causes confusion. Canceling redundant paragraphs will make 38 CFR Part 21 easier to use. The agency also proposes to amend a paragraph dealing with advance payment so that it is in agreement with other paragraphs on the same subject. If all paragraphs concerning advance payment are in agreement, confusion among users of these regulations will be eliminated.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pp. 13836 and 13837 of the **Federal Register** of April 8, 1985 there was published a notice of intent to amend 38 CFR Part 21 to cancel some unnecessary regulations and to bring all regulations dealing with advance payment of educational assistance allowance into agreement. Interested people were given 30 days to submit comments, suggestions or objections.

The VA received one letter from an educational association. The letter writer commented that he had no objection to the proposed changes. Accordingly, the VA is making the proposal final.

The VA has determined that the paragraphs in the regulations it is cancelling are not major rules as that term is defined by E.O. 12291, entitled Federal Regulation. The agency has determined that the paragraph it is amending is not a major rule. These changes will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that cancellation and amendment of these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed cancellation and amendment of these regulations, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

This certification can be made because this is a technical change. The material contained in these canceled regulations is retained in other regulations which are not being canceled. For example, the canceled portions of 38 CFR 21.4136 and 21.4137 are covered adequately in 38 CFR 21.4138. Similarly, the material being deleted from 38 CFR 21.235 and 21.4237 is retained in 38 CFR 21.4200. The material in the amended regulation is not new. It merely brings 38 CFR 21.4137 into agreement with other similar regulations.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this cancellation and amendment of regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 15, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and Education,* is amended as follows:

§ 21.4136 [Amended]

1. Section 21.4136 is amended by removing and reserving paragraph (h).

2. Section 21.4137 is amended by removing and reserving paragraph (e), and by revising paragraph (g)(2) and the introductory portion of paragraph (g)(3) to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. chapter 35.

* * * * *

(e) [Reserved]

* * * * *

(g) *Advance payment.* * * *

(2) *Payment.* (i) The amount of payment is the allowance for the month or fraction thereof in which the course will begin plus the allowance for the following month.

(ii) The VA will mail an advance payment check to the institution for delivery to the eligible person upon registration when—

(A) The VA has received an application, together with an enrollment certification or other information as required by paragraph (g)(3) of this section.

(B) The provisions of subparagraph (2)(v) of this paragraph do not prevent making an advance payment to the eligibile person.

(C) The provisions of paragraph (g)(4) of this section are met, and

(D) There is no evidence in the eligible person's file showing that he or she is not eligible for an advance.

(iii) The educational institution shall not deliver the advance payment check more than 30 days in advance of commencement of the program.

(iv) The VA shall make subsequent payments each month subject to the certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. The VA will withhold final payment if absence reporting is required, until the VA receives the required certification and makes any necessary adjustments.

(v) The Director of the VA field station of jurisdiction may direct that advance payments not be made to eligible persons attending an educational institution if—

(A) The educational institution demonstrates an inability to comply with the requirements of subparagraph (2)(iii) of this paragraph, or

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible person or return to the VA, or

(C) The Director determines, based on compelling evidence, that the institution demonstrates its inability to discharge its responsibilities under the advance payment program.

(3) *Certification.* Advance payment will be authorized at the beginning of each term preceded by an interval of nonpayment for 30 days or more, provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person

contains the following information: [38 U.S.C. 1780(d)]

* * * * *

§ 21.4235 [Amended]

3. In § 21.4235, paragraphs (g), (h) and (i) are removed.

§ 21.4237 [Amended]

4. In § 21.4237, paragraphs (g), (h) and (i) are removed. (38 U.S.C. 210(c))

[FR Doc. 85-21387 Filed 9-6-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3123/R788; PH-FRL 2895-2]

Pesticide Tolerance for Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide carbofuran and its metabolites in or on the raw agricultural commodity artichokes. The regulation, to establish a maximum permissible level for residues of carbofuran in or on artichokes, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on September 9, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4E3123/R788], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By Mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of August 7, 1985 (50 FR 31894), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 4E3123 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the agricultural experiment station of California. The petition proposed the establishment of a tolerance for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the raw agricultural commodity artichokes at 0.4 part per million (ppm), of which no more than 0.2 ppm is carbamates. The petitioner further proposed that the use of carbofuran on artichokes be limited to California based on the geographic representation of the residue data submitted. .

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of carbofuran. Based on the data submitted, the Agency has determined that the establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 3, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.254 is amended by redesignating and revising the introductory paragraph as the introductory paragraph to paragraph (a) and adding paragraph (b); to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

(a) Tolerances are established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite-2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3,-oxo-7-benzofurandiol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodities:

Commodities	Parts per million
* * * * *	

(b) Tolerances with regional registration are established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,3-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodities	Parts per million
Artichokes (of which not more than 0.2 ppm is carbamates)	0.4

[FR Doc. 85-21571 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 420

[Doc. No. 0031A]

Grain Sorgum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporatiopn (FCIC) proposes to revise and reissue the Grain Sorgum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Restrict the insured's share of indemnity when the crop is transferred; (2) increase the minimum acreage which must be replanted before earning replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to clarify when land located outside the county is included in the county; and (6) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in cost or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the grain sorghum policy are:

1. *Section 2.c.*—Add a clause to restrict the insured's share when the crop is transferred after planting and before harvest.

2. *Section 8.a.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities in a more timely fashion.

3. *Section 9.f.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment, at the time of final planting. This reduces the number of inspections by eliminating small replant payments and paperwork, and specifies the time for determining whether the acreage to be replanted qualifies.

4. *Section 17.*—Add a definition of "ASCS". Amend the "County" definition to add land identified by an ASCS farm serial number but located outside the county. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1986 and succeeding crop years, to read as follows:

PART 420—GRAIN SORGHUM CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

420.1 Availability of grain sorghum crop insurance.
420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
420.3 OMB control numbers.
420.4 Creditors.
420.5 Good faith reliance on misrepresentation.
420.6 The contract.
420.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crops Years

§ 420.1 Availability of grain sorghum crop insurance.

Insurance shall be offered under the provisions of this subpart on grain sorghum in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grain sorghum which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 420.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 420.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 420.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the grain sorghum insurance contract, whenever: (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be grnted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 420.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the grain sorghum crop as provided in the policy. The contract shall consist of the application, the policy, and the county acturial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 420.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the grain sorghum crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a grain sorghum contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended, from time to time for subsequent crop years. The provisions of the Grain Sorghum Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grain Sorghum Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuariable table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good grain sorghum farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good grain sorghum irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be grain sorghum which is initially planted to a combine-type hybrid grain sorghum for harvest as grain, which is grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grain sorghum planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported

by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured grain sorghum at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to grain sorghum, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer grain sorghum;

(6) Planted to a forage sorghum or initially thick-planted for silage or fodder;

(7) Of a second grain sorghum crop following a grain sorghum crop harvested in the same crop year;

(8) Planted to a type or variety of grain sorghum not established as adapted to the area or excluded by the actuarial table; or

(9) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good grain sorghum irrigation practice.

f. Unless otherwise provided in the actuarial table and if not irrigated, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation. If such acreage is destroyed and replanted to any grain-producing type grain sorghum in any planting pattern, the acreage will be considered insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of grain sorghum in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grain sorghum planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the grain sorghum is planted and ends at the earliest of:

(a) Total destruction of the grain sorghum;

(b) Combining, threshing, or removal from the field;

(c) Final adjustment of a loss; or

(d) The following dates immediately after planting:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Countries, Texas, and all Texas counties south thereof—September 30;

(2) All other Texas counties and all other states—December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant grain sorghum damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the grain sorghum on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the grain sorghum and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested grain sorghum (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the grain sorghum on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the grain sorghum on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the grain sorghum which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grain sorghum on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of grain sorghum on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower

premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature grain sorghum production which, due to insurable causes:

(a) Has a test weight of less than 51 pounds per bushel; or

(b) Contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of such grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day the insured grain sorghum is sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(5) The amount of production of any unharvested grain sorghum may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grain sorghum is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured grain sorghum replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed 7 bushels multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published semi-annually in the **Federal Register** on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the grain sorghum is planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We many void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grain sorghum produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract. Failure to maintain and keep such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date satisfactory records of the previous year. The Field Actuarial Office may assign a yield for that year if, prior to the cancellaton date, you show to our satisfaction that the records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county:	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crocett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We have change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any written notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of grain sorghum crop insurance:

a. "Actuarial table" means the forms and related material for the crop year appoved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grain sourghum insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and any:

(1) Additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(2) Land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the grain sorghum is normally grown and will be designated by the calendar year in which the grain sorghum is normally harvested.

e. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to grain sorghum.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the grain sorghum or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of grain sorghum in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grain sorghum on such land will be considered as owned by the lessee. Units will be determined when the acrage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on August 14, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21361 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 423

[Doc. No. 2441S]

Flax Crop Insurnace Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) add as a cause of loss the unavoidable failure of irrigation water supply; (3) change the method of computing indemnities when acreage, share or practice is underreported; (4) shorten the time in which to give notice of loss; (5) change the cancellation and termination dates and filing dates in certain counties; (6) add definitions for the terms "ASCS" and "Loss ratio"; (7) redefine "county" to clarify when land located outside the county is included in the county; and (8) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop

Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the flax policy area:

1. *Section 1.a.(8)*—Add the failure of the irrigation water supply because of unavoidable cause after planting as an insurable cause of loss. This clarifies intent since it was implied in Section 2.e.(2).

2. *Section 5.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to loss the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. *Section 8.a.(4)*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

4. *Section 9.d.*—Change the method of computing the indemnity when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

6. *Section 17.*— Add definitions for "ASCS" and "Loss ratio" for clarity. Amend the "county" definition to clarify land located outside the county. Amend the "unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires removal of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 423

Crop Insurance, Flax.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years, to read as follows:

PART 423—FLAX CROP INSURANCE REGULATIONS

Subpart—Regulation for the 1986 and Succeeding Crop Years

Sec.

423.1 Availability of flax crop insurance.
423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
423.3 OMB control numbers.
423.4 Creditors.
423.5 Good faith reliance on misrepresentation.
423.6 The contract.
423.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crops Years

§ 423.1 Availability of flax crop insurance.

Insurance shall be offered under the provisions of this subpart on flax in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for flax which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 423.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400 in Title 7 CFR.

§ 423.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution,

bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 423.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the flax insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of Corporation: (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 423.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the flax crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 423.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the flax crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a flax insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Flax Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Flax Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good flax farming practices;
(3) The failure to follow a good flax irrigation practice;
(4) The failure or breakdown of irrigation equipment;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be flaxseed ("flax") planted for harvest as seed, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be flax planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured flax at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to flax, and such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of volunteer flax;
(6) Planted to a type of variety of flax not established as adapted to the area or excluded by the actuarial table; or
(7) Planted with another crop except perennial grasses or legumes other than vetch.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good flax irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share and practice.

You must report on our form:

a. All the acreage of flax in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any flax planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the flax policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deduction for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the flax is planted and ends at the earliest of:

(a) Total destruction of the flax;

(b) Combining, threshing, or removal from the field;

(c) Final adjustment of a loss; or

(d) October 31 following planting.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(i) During the period before harvest, the flax on any unit is damaged and you decide not to further care for or harvest any part of it;

(ii) You want our consent to put the acreage to another use; or

(iii) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the flax and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested flax (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(i) Total destruction of the flax on the unit;

(ii) Harvest of the unit; or

(iii) October 31 following planting.

b. You must obtain written consent from us before you destroy any of the flax which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the flax on the unit;

(2) Harvest of the unit; or

(3) October 31 following planting.

b. We will not pay any indemnity unless you:

(1) Establish the total production of flax on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of flax to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature flax which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by:

(i) Dividing the value per bushel of the insured flax by the price per bushel of U.S. No. 2 flax; and

(ii) Multiplying the result by the number of bushels of insured flax.

The applicable price for No. 2 flax will be the local market price on the earlier of the day the loss is adjusted or the day insured flax is sold.

(2) Appraised production to be counted will include:

(i) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good flax farming practices;

(ii) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(iii) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(i) Not put to another use before harvest of flax becomes general in the county and reappraised by us;

(ii) Harvested; or

(iii) Further damaged by an insured cause and reappraised by us.

(4) The amount of production of any unharvested flax may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the flax is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act

of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the flax is planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have conceled or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity of insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for you loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all flax produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in concellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the Contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract may be canceled if you do not firnish to us, on or before the concellation date, satisfactory records of production for the previous crop year. If you show to our satisfaction, prior to the cancellation date, that the records are not available due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for the year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such drop year for the contract on which the amount is due. The date or payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of flax crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding flax insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the country but physically located in another county.

d. "Crop year" means the period within which the flax is normally grown and will be designated by the calendar year in which the flax is normally harvested.

e. "Harvest" means the completion of combining or threshing of flax on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the flax or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of flax in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss.

We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on August 21, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21365 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 432

[Amdt. No. 1; Doc. No. 0030A]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years by revising and reissuing the crop policy. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) increase the amount of acreage which must be replanted to obtain replanting payments; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add a definition of "ASCS"; (5) redefine "County" to add certain land located outside the county; and (6) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the corn policy are:

1. *Section 2.c.*—Change the method of calculating the share of an indemnity on crops transferred before harvest. This provision restricts the payment of an indemnity to insureds actually having an interest in the crop.

2. *Section 9.g.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment, at the time of final planting. This change will reduce the number of inspections by eliminating small replant payments and paperwork. It also provides a specific time frame for determining whether the unit qualifies for replanting payments.

3. *Section 8.a.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change will allow FCIC to determine indemnities in a more timely fashion.

4. *Section 17.*—Add a definition of "ASCS". Amend the "County" definition to add land located outside the county in certain instances. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1986 and succeeding crop years, in the following instances:

PART 432—[AMENDED]

1. The authority citation for 7 CFR Part 432 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 432.7(d) is amended by revising the Corn Insurance Policy for the 1986 and succeeding crop years to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;
unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(9).

b. We will not insure against any loss of production due to:
(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good corn farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow good corn irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be field corn ("corn") planted for harvest as grain or silage, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured corn at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:
(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:
(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to corn, and such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of volunteer corn;
(6) Planted to a type or variety of corn not established as adapted to the area or excluded by the actuarial table; or
(7) Planted with another crop except sorghum (grain or forage-type) when the sorghum is not more than 20 percent of the stand.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good corn irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:
a. All acreage of corn in the county in which you have a share;
b. The practice; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:
(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;
(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the corn is planted and ends at the earliest of:
a. Total destruction of the corn;
b. Harvest;
c. Final adjustment of a loss;
d. The date immediately following planting as follows:
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof—September 30;
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington—October 31;
(3) All other counties where our actuarial table shows:
(a) Only a silage guarantee; or
(b) Both a grain and a silage guarantee on any acreage of corn harvested for silage—September 30;
(4) All other counties—December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:
(1) You must give us written notice if:
(a) You want our consent to replant corn damaged due to any insured cause (See subsection 9.g.);
(b) During the period before harvest, the corn on any unit is damaged and you decide not to further care for or harvest any part of it;
(c) You want our consent to put the acreage to another use; or
(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of unharvested corn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:
(a) Total destruction of the corn on the unit;
(b) Harvest of the unit; or
(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the corn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of corn and/or silage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see section 9f) by the price election; and

(4) Multiplying this result by your share.

d. If a unit contains acreage to which both a grain and silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted will be determined separately for each portion and then added together to determine the total amount for the unit.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production to be counted for a unit will include all harvested and appraised production.

(1) When the actuarial table shows only a grain guarantee, all production and appraisals will be determined in bushels. When the actuarial table shows only a silage guarantee, all production and appraisals will be in tons. When the actuarial table shows both a grain and silage guarantee, the production and appraisals will be determined in bushels for any unharvested acreage and in bushels or tons for any harvested acreage, depending upon whether the acreage is harvested for grain or silage.

(2) Mature grain production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Which, due to insurable causes, has moisture over 40 percent; test weight below 40 pounds per bushel; or kernel damage more than 15 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(ii) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the ealier of the day the loss is adjusted or the day such corn was sold. The quality adjustment will not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(3) If the actuarial table shows both a grain and silage guarantee or only a silage guarantee, the corn is harvested as silage, a grain appraisal is made concurrently with a silage appraisal, and the grain appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. There will be no reduction allowed for harvested silage production if a representative sample (at least 10 feet wide and the entire length of the field) for each 25 acres of corn harvested for silage is not left until appraised by us.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of corn becomes general in the country and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(6) The amount of production of any unharvested corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If the actuarial table shows a silage guarantee or both a grain and silage guarantee and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production by the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(8) If the actuarial table shows only a silage guarantee, we may convert bushels of grain to tons of silage, and increase all production harvested after the normal silage harvesting period by the factor designated by the actuarial table to reflect the normal mositure content of silage harvested during the normal silage harvesting period.

(9) If you elect to exclude hail and fire as insured causes of loss and the corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to exclude Hail and Fire."

g. A replanting payment may be made on any insured corn replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, except that:

(a) If the actuarial table shows only a grain guarantee or both a grain and silage guarantee, the payment will not exceed 8 bushels multiplied by the price election, multiplied by your share; or

(b) If the actuarial table shows only a silage guarantee, the payment will not exceed 1 ton multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium deterrmined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a fianl judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** on or about January 1, and July 1 of each year. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid ot the person(s) determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity detemined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right of indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date, satisfactory records of production for the previous year. The Field Actuarial Office may assign a yield for that year if, prior to the cancellation date you show, to our satisfaction that the records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county:	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the corn is normally grown and will be designated by the calendar year in which the corn is normally harvested.

e. "Harvest" means the completion of combining, picking, or cutting the corn for the purpose of livestock feed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to corn.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

m. "Tenant" means a person who rents land from another person for a share of the corn or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of corn in the county on the date of planting for the corp year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 25, 1985.

Merritt W. Sprague,

Manger, Federal Crop Insurance Corporation.

[FR Doc. 85-21364 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 433

[Amdt. No. 1; Doc. No. 2445S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years by revising § 433.7(d). The intended effect of this rule is to: (1) Provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify provisions regarding failure to replant bean acreage; (4) increase the amount of acreage which must be replanted to obtain replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemity; (6) allow a quality adjustment for appraisal purposes when crop is mature but not harvested; (7) add a definition for the term "ASCS"; (8) redefine "County" to specify when land located outside the county will be included in the county; and (9) redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1990.

Merritt W. Sprague, Manager, FCIC has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the dry bean policy are:

1. *Section 2.d.*—Add a clause to clarify the method of calculating the insured's share of an indemnity on crops sold before harvest. This change prevents the practice of collecting an indemnity on a crop in which the insured no longer has an interest.

2. *Section 2.e.*—Specify the varietal groups of beans to assure equal treatment of producers.

3. *Section 9.g.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment and apply a specific time frame for determining the replant for the unit. This change will reduce the number of inspections by reducing the insignificantly small replant payments and paper work.

4. *Section 8.a.*—Shorten from 30 to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change allows FCIC to determine indemnities more efficiently and more quickly.

5. *Section 9.f.*—Remove the requirement that the beans be threshed to allow quality adjustment for field appraisals when the crop is mature but not harvested. Change "threshed" to "mature" to allow quality adjustment for field appraisals, when the crop is mature but not harvested.

6. *Section 17.*—Add a definition for "ASCS". Amend the "County" definition to clarify when land located outside the county is included in the county. Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

On March 14, 1985 at FR 50 10201, the regulations for the 1986 and subsequent crop year Dry Bean Crop Insurance were revised and rewritten effective December 1, 1985. It is now proposed that the policy published in that revision be amended as set out herein. If this proposed rule is adopted, the effective date will be December 2, 1985.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for

public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry beans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years, in the following instances:

PART 433—[AMENDED]

1. The authority citation for 7 CFR Part 433 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

§ 433.7 [Amended]

2. 7 CFR 433.7(d) is amended by revising the Dry Bean Insurance Policy for the 1986 and Succeeding Crop Years, to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

DRY BEAN CROP INSURANCE POLICY

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the acturial table or section 9[5].

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good bean farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow good bean irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and
(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract executed with a seed company before the acreage reporting date; which are grown on insured acreage and for which a guarantee and premium rate are provided by the acturial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the acturial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured beans at the time of planting. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(4) Which is destroyed, it is practical to replant to the same varietal group of garden seed beans or the same varietal group of dry edible beans, and such acreage is not replanted;
(5) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;
(6) Of volunteer beans;
(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;
(8) Which does not meet the rotation requirements designated by the actuarial table; or
(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting to carry out a good bean irrigation practice.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but if insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans before the final planting date will be regarded as insured acreage.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the dry bean policy for the 1985 crop year, you will continue to receive

the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or it Agencies.

7. Insurance period.

Insurance attaches when the beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (See Section 9.g.);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) total destruction of the beans on the unit;

(2) harvest of the unit; or

(3) the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity on each unit of bush varieties of garden seed beans will be determined by subtracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obatined by multiplying, by variety, the production guarantee per acre by the insured acreage, and the result by the price per pound at which indemnities will be computed. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent; or

(b) Of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table, or would not meet these requirements if properly handled, or if a conversion factor is not designated by the actuarial table, any mature beans which do not grade No. 2 or better in accordance with the Official United States Grain Standards, will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium white, the price will be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but

will not exceed the product obtained by multiplying 100 pounds times the price election, times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all beans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for the previous crop year. If you show to our satisfaction, prior to the canellation date, that the records are not available due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agrcilture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31.
All other states	April 15.

f. If you die or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any of the provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acrage, and related information regarding dry bean insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and: (1) Any additional land located in a local producing area bordering on the county, as shown by the acturial table; and (2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

e. "Harvest" means the completion of combining or threshing of beans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes, and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 5, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21363 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 442

[Amdt. No. 3; Doc. No. 2606S]

Prevented Planting Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Prevented planting Crop Insurance Regulations (7 CFR 442.7), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) remove the Premium Adjustment Table; (2) change the method of computing indemities when acreage or share is underreported; (3) remove the provision for transfer of insurance experience basesd on premium adjustments from one contract to another; (4) add definitions of "ASCS" and "Loss Ratio"; and (5) redefine "County" to provide that land identified by an ASCS farm serial number an located outside the county will be included in the county and redefine "Unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202)447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the prevented planting policy are:

1. *Section 5.*—Remove the Premium Adjustment Table.

The Premium Adjustment Table is being removed. Insurance is now based on the actual production history (APH). Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year, or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the premium Adjustment Table eliminates the need for these provisions.

2. *Section 8.d.*—Change the method of computing indemnities when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

3. *Section 17.*—Add definitions of "ASCS" and "Loss ratio". Amend the "County" definition to clarify, that land identified by an ASCS farm serial number and located outside the county will be included in the county. Amend the "Unit" definition by deleting the provision allowing unit division.

The difficulty of maintaining and auditing accurate and adequate records

of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 442

Crop insurance, Prevented planting.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Prevented Planting Crop Insurance Regulations (7 CFR Part 442), effective for the 1986 and succeeding crop years as follows:

PART 442—[AMENDED]

1. The Authority Citation for 7 CFR Part 442 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

2. 7 CFR 442.7(d) is revised to read as follows:

§ 442.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Prevented Planting Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Prevented Planting—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable prevention of planting insured acreage during the insurance period due to excessive moisture conditions occurring within the insurance period, unless this cause is excepted, excluded, or limited by the actuarial table.

b. We will not cover any prevention of planting due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) The failure to plant insured acreage due to a cause other than excessive moisture.

2. Acreage and share insured.

a. The acreage insured for each crop year will be the cultivated acreage intended for planting in which you have a share, as reported by you or as determined by us, whichever we elect and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The insured share will be your share as landlord, owner-operator, or tenant in the insured prevented planting at the time insurance attaches.

c. "Cultivated acreage intended for planting" means land that was ready or, except for excessive moisture could have been made ready, for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which a crop was planted prior to the acreage reporting date;

(2) On which a prevented planting indemnity was claimed the prior crop year if such land is not worked prior to the October 31 prior to the crop year; or

(3) Which was not or will not be planted to comply with any other United States Department of Agriculture or state programs or for any other reason.

3. Report of acreage and share.

You must report on our form:

a. All the cultivated acreage intended for planting in the county in which you have a share; and

b. Your share at the time of reporting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any insurable acreage in the county. This report must be submitted annually on or before the January 31 reporting date. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the prevented planting policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches March 5 of the crop year and ends at the earliest of:

a. Planting of the acreage; or

b. The prevented planting date.

8. Notice of damage or loss.

a. If you are going to claim an indemnity on any unit, we must be given notice not later than 5 days after the prevented planting date.

b. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on the unit was directly caused by excessive moisture during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Subtracting therefrom the amount obtained by multiplying the spring-planted acreage, plus any acreage intended for planting from which a forage crop is harvested, plus any acreage which could have been planted, times the amount of insurance; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported and not on the actual information determined.

e. You must not abandon any acreage to us.

f. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

g. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and a submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published semi-annually in the **Federal Register** on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an idemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the insured, uninsured and planted acreage in your farming operation. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will by conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of prevented planted crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the amounts of insurance, coverage levels, premium rates, insurable and uninsurable acreage, and related information regarding prevented planting insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and any:

(1) Additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(2) Land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the crops to be planted are normally planted and will be designated by the calendar year in which the crops are normally planted.

e. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indeminity to premium.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Prevented planting date" means the latest date established by the crop actuarial tables that we will insure any spring-planted crop in the county, except tobacco. This date includes any extended date or final date offered under any late planting agreement option.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by your or designated by us.

k. "Spring-planted acreage" means the insured acreage:

(1) Planted to any crop during the insurance period; or

(2) Which could have been planted during the insurance period to a crop normally included in your farming operation or shown in the actuarial table as suitable for production in the county.

l. "Tenant" means a person who rents land from another person for a share of the crop(s) or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage in the county which you intend to plant:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the prevented planting on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or member of your household to be your bona fide share or the bona fida share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to

affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on July 16, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-21362 Filed 9-6-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-73-AD]

Airworthiness Directives; DeHavilland Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the internal circuitry of the paralleling control box of the 400 HZ AC electrical power system on certain Model DHC-7 airplanes. Reports indicate that failures of the 400 HZ inverters do not activate crew warning lights. This action is proposed to assure proper operation of the crew warning lights and thereby reduce the potential for complete failure.

DATES: Comments must be received on or before October 29, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator befor taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Canadian Department of Transport (DOT) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain DeHavilland Model DHC-7 airplanes. There have been several reports of failures of the 400 HZ inverters without a corresponding warning light activating on the Master Caution Panel. To prevent this from recurring, the DOT issued an airworthiness directive on September 10, 1982, which requires that the 400 HZ AC electrical system paralleling control box be modified in accordance with DeHavilland Service Bulletin 7.24.13.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the electrical system in accordance with the previously mentioned service bulletin.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately one man-hour per airplane to accomplish the required actions, and that the average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $560.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DHC-7 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to Model DHC-7 airplanes, serial numbers 1 through 14 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To assure proper crew warning in the event of the loss of the 400 HZ AC electrical power system, accomplish the following:

1. Modify the 400 HZ AC system in accordance with DeHavilland Service

Bulletin 7-24-13, Revision A, dated September 10, 1982.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 30, 1985.

Charles R. Foster,
Director, Northwest Mountain Region.

[FR Doc. 85-21367 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM85-11-000]

Revision of FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis

September 4, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend FERC Form No. 73 and the instructions applicable to the collection of service life depreciation data from oil pipeline companies. The information collected on FERC Form No. 73 supplies the data base for several computer programs known collectively as the Depreciation Life Analysis System (DLAS), which assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates. The book depreciation rates which are computed using the FERC Form No. 73 data are used by oil pipeline companies to compute the depreciation portion of their operating expenses for cost of service purposes.

The Commission has reviewed FERC Form No. 73 as part of its ongoing program to reduce unnecessary reporting burdens by eliminating the reporting of information that is no longer used for decision making in the regulatory process. As a result of its review, the Commission proposes to modify the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format.

DATE: Comments must be filed by 4:30 p.m. on October 24, 1985.

ADDRESS: Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM85-11-000. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Gwendolyn D. Prioleau, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8479.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission, or FERC) proposes to revise FERC Form No. 73, which is used to collect service life depreciation data from oil pipeline companies. The proposed rule would modify the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format, and add a new § 357.3 to the Commission's regulations to set forth the filing requirements and the format for FERC Form No. 73.[1] The Commission's objectives in proposing this rule are to reduce the reporting burden of oil pipeline companies and to make the data used in the analysis of oil pipeline depreciation rates and service lives easier to process at the Commission. Amending the format and filing instructions for FERC Form No. 73 as proposed would reduce the information required from oil pipelines and the amount of time required by Commission employees to process the data for input to the Depreciation Life Analysis System (DLAS) programs.

II. Background

The Commission's jurisdiction over oil pipelines was transferred from the Interstate Commerce Commission (ICC) to this Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act)[2] and Executive Order No. 12009.[3] The scope of this Commission's jurisdiction over oil pipelines includes the authority to regulate the rates and charges of oil pipelines for the transportation of oil in interstate commerce, and the authority to establish valuations for oil pipelines. Section 705(a) of the DOE Act provides that the rules and regulations relating to functions transferred to this Commission will continue in effect until modified by the Commission.

Regulations governing oil pipeline depreciation accounting for carrier property are set forth in the General Instructions to Title 18 CFR Part 352.[4] Oil pipeline companies are required to submit depreciation information to the Commission pursuant to 1-8(b)(2) and 1-8(b)(3) of the General Instructions found at 18 CFR Part 352. These instructions require oil pipeline carriers to compute percentage rate studies for their depreciable property accounts, and to maintain records as to the service life and net salvage value of their property and property retirements.

The Commission uses the information reported in the FERC Form No. 73 to conduct a depreciation rate investigation for oil pipelines on an average of once every five years. The information is used as a data base to several computer programs known collectively as the DLAS, which assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates.[5] The book depreciation rates which are computed using the FERC Form No. 73 data are set forth in orders periodically issued by the Commission and are used by oil pipeline companies to compute the depreciation portion of their operating expenses for cost of service purposes.

The proposed rule would eliminate certain data currently collected from oil pipeline companies and modify the instructions to conform to data submitted as input to the DLAS computer programs. The Commission believes that the proposed changes to the data submittal instructions and

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[1] The proposed format for FERC Form No. 73 will not be printed in the **Federal Register** or the Code of Federal Regulations. A copy of the proposed form, including all instructions to the form, is available for review at the Public Reference Sections, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8118.

[2] 42 U.S.C. 7155 and 7172 (1982).

[3] 42 FR 46267 (Sept. 13, 1977).

[4] Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act.

[5] The definitions for "depreciation" and "service life" set forth in 18 CFR Part 352 are as follows: "Depreciation" means the loss in service value not restored by current maintenance and incurred in connection with the consuption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, and the effect of which can be forecast with a reasonable approach to accuracy. "Service life" means the period between the date that property is placed in service and the date of its retirement.

format of FERC Form No. 73 will reduce the amount of time required by Commission Staff to process the data and reduce the reporting burden on affected pipelines, while making the data required more relevant to the purpose for which it is ultimately used.

III. Summary of the Proposed Rule

A. Standard Format for FERC Form No. 73

The proposed rule requests that all actuarial data be submitted on magnetic computer tape. Information would be submitted on FERC Form No. 73 only as an alternative to magnetic computer tape. The proposed amendment to the instructions would reverse the current preference for reporting data on FERC Form No. 73, in favor of magnetic computer tape.

The proposed rule requests that actuarial data be reported by vintage year from the year 1900, or the date of initial operations if later than 1900. The proposed format for FERC No. 73 specifies that the year 1900 is the earliest date for which respondents are required to submit actuarial data. This requirement would amend the existing instructions to delete the requirement that actuarial data must be reported by vintage year "from December 31, 1935 or date of initial operations, whichever is earlier, to the present date." Since the Commission on longer uses data prior to the year 1900 in the selection of oil pipeline service lives and book depreciation rates, it is unnecessary to require data prior to the year 1900 if initial operations began before that date.

Also, the Commission is proposing to eliminate from FERC Form No. 73 the reporting of data on net salvage. Consistent with the Commission's proposal to eliminate from FERC Form No. 73 data in the net salvage category, it is proposing to eliminate the requirement for submitting net salvage data from the instructions for submission of actuarial data by oil pipeline carriers.

The proposed rule would eliminate the option to submit simulation data on cards, and would require that data be submitted on either FERC Form No. 73 or on magnetic computer tape. The instructions for simulation data would also be amended by the proposed rule. Specifically, it would indicate that simulation data should be submitted for each transaction year from the year 1900, or the date of initial operations if later than 1900. The proposed format for FERC Form No. 73 specifies that the year 1900 is the earliest date for which respondents are required to submit simulation data. This requirement would amend the existing instructions for simulation data to delete the requirement that data be submitted for each transaction year "from December 31, 1935 or date of initial operations, whichever is earlier, to the present date." Since the Commission no longer uses data prior to the year 1900 in the selection of oil pipeline service lives and book depreciation rates, it is unnecessary to require data prior to the year 1900 if initial operations began before that date.

In addition, the proposed rule would list categories "Installation Year," "Corrected Transaction Year," "Number of Units," "Gross Salvage," and "Cost of Removal" as not applicable in the instruction for simulation data to reflect the fact that the DLAS simulation programs do not use this information.

B. Addition of New § 357.3 to Regulations

If promulgated, the proposed rule adds a new § 357.3 to the Commission's regulations. The proposed new § 357.3 states that any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates must submit data in the format prescribed in FERC Form No. 73.

IV. Request for Specific Comments

The Commission is specifically seeking comments on the following issues: (1) The average amount of time currently required by respondent oil pipeline carriers to complete the filing requirements of FERC Form No. 73 for actuarial and simulation data, for both initial and updated information and specifying whether respondent currently reports on FERC Form No. 73, computer cards, magnetic tape or some other format; (2) whether respondent anticipates an increase in the amount of time required to prepare initial or updated information for either actuarial or simulation data if it reports by magnetic tape, as opposed to FERC Form No. 73; and (3) whether and how the Commission's decision in Opinion No. 154–B [6] affects the Commission's need for the data collected in FERC Form No. 73.

V. Paperwork Reduction Act Statement

The proposed revisions to the information collection provisions set forth in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.13 (1984). Interested persons can obtain information on these proposed revised information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Gwendolyn D. Prioleau (202) 357–8479). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. In defining small entities, the RFA refers to the Small Business Act's definition of a small business concern which is a business independently owned and operated, and which is not dominant in its field of operation.[7] Pursuant to section 605(b), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities since the majority of oil pipeline companies subject to the Commission's jurisdiction are not independently owned and operated.

In addition, the data required by FERC Form No. 73 is readily available to the oil pipeline carriers and imposes the least burden possible on respondents because no new burden is created by the proposed revision of FERC Form No. 73, and the proposed rule provides alternative methods for submitting the data collected by FERC Form No. 73. Once the data base is established during an initial depreciation rate investigation, only minor updates are required for a subsequent rate investigation.

VII. Written Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning the proposed changes to FERC Form No. 73 and the instructions for submitting depreciation data that are set out in this notice. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should reference Docket No. RM85–11–000. An original and 14 copies of such comments should be filed with the Commission by October 24, 1985.

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[6] Williams Pipe Line Co., Op. No. 154–B, 31 FERC ¶ 61,377 (1985).

[7] 5 U.S.C. 601(3) (1982).

All written submissions to this rulemaking will be placed in the Commission's public file and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 357

Pipelines, Reporting requirements.

In consideration of the foregoing, the Commission proposes to amend FERC Form No. 73, the instructions for submitting depreciation data, and Part 357 of Chapter I, Subchapter S, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 357—[AMENDED]

1. The authority citation for Part 357 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); EO 12009, 3 CFR 142 (1978).

2. Part 357 is amended by adding a new § 357.3 to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company only during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available at the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[FR Doc. 85–21458 Filed 9–6–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENTOF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulations Amendments Relating to Prior Disclosures of Violations of 19 U.S.C. 1592

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: This document extends the period of time for the submission of written comments from interested members of the public with respect to a proposal to amend the Customs Regulations relating to prior disclosure of violations of 19 U.S.C. 1592. The proposal clarifies the issue of when a person is presumed to have knowledge of the commencement of a formal investigation of a violation. The proposed changes also would provide that a prior disclosure is precluded after any Customs officer determines that there is reasonable cause to believe that a violation of 19 U.S.C. 1592 has occurred. A notice inviting the public to comment on the proposal was published in the **Federal Register** on July 8, 1985 (50 FR 27829). Comments were to have been received on or before September 6, 1985.

Customs has been requested to extend the comment period by the Customs and Tariffs Committee, Section of Administrative Law of the American Bar Association, so that they can discuss this matter and obtain approval of their comments on the proposal at their next Council meeting scheduled for September 28, 1985. Inasmuch as this Committee represents a significant segment of the Customs Bar whose views should be considered before a final determination is made on the proposed changes, this request has merit. Therefore, the comment period is being extended to October 6, 1985.

DATE: Comments must be received on or before October 6, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

Comments

All comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani or Charles D. Ressin, Commercial Fraud and Negligence Penalties Branch, U.S. Customs Service, Room 2338, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8317).

Dated: August 30, 1985.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 85–21434 Filed 9–6–85; 8:45 am]

BILLING CODE 4820-02-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2642

Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed revision of the Interim Regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642) would amend the rules under which multiemployer pension plans may change the method by which they allocate unfunded vested benefits to withdrawing employers under section 4211 of the Employee Retirement Income Security Act of 1974. Generally, plans may adopt any of the statutory allocation methods described in section 4211 subject to the approval of the Pension Benefit Guaranty Corporation. In addition, section 4211(c)(5) of ERISA authorizes the PBGC to prescribe regulations under which plans may adopt other allocation methods or modifications to the statutory methods either with or without the PBGC's approval. The PBGC's regulation implementing these provisions has been in effect since January 1981. Since then, the PBGC has identified a number of ways in which the PBGC might simplify the regulation, as well as areas in which the PBGC needs either to broaden or limit the rules. Accordingly, the effect of this proposed revision, if adopted, would be to make clarifications and corrections in the regulation, to simplify the process for requesting PBGC approval of amendments, to add to the modifications that do not require PBGC approval, and to prohibit certain types of alternative allocation methods.

DATE: Comments must be submitted by November 8, 1985.

ADDRESSES: Comments should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006. The PBGC will make written comments available for public inspection at the PBGC Communications

and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–254–4860 (202–254–8010 for TTY and TDD). (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Statutory Background

Under section 4201 of the Employee Retirement Income Security Act ("ERISA"), an employer that withdraws from a multiemployer pension plan may incur withdrawal liability to the plan. Withdrawal liability represents the employer's allocable share of the plan's unfunded vested benefits determined under section 4211 of ERISA, adjusted in accordance with other provisions of ERISA. The withdrawal liability rules, as amended by section 558 of the Tax Reform Act of 1984, apply to withdrawals after September 25, 1980.

Section 4211 of ERISA prescribes four methods for determining an employer's allocable share of unfunded vested benefits, and also provides for possible modifications of those methods and for the use of allocation methods other than those prescribed. The four allocation methods set forth in section 4211 are the presumptive method (paragraph (b)), the modified presumptive method (paragraph (c)(2)), the rolling–5 method (paragraph (c)(3)), and the direct attribution method (paragraph (c)(4)). Section 4211(b)(1) requires most plans, unless amended, to use the presumptive method. Section 4211(d)(1) requires a plan described in section 404(c) of the Internal Revenue Code to use the rolling–5 method unless it is amended to adopt one of the statutory alternatives.

Pursuant to section 4211(c)(1), plans may, by amendment, adopt any of the other three statutory methods for allocating unfunded vested benefits. Plans may also adopt other, nonstatutory, allocation methods, or modifications to the statutory methods, under regulations issued pursuant to section 4211(c)(5). All changes to a plan's allocation rules are subject to the approval of the PBGC.

The Interim Regulation

On January 19, 1981, the PBGC published its Interim Regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642). Subpart B of the regulation prescribed adjustments to the statutory allocation methods that could be adopted without PBGC approval. Subpart C of the regulation established a procedure under which plan sponsors could submit other alternative allocation methods for PBGC approval. The PBGC invited comments on the regulation but did not receive any.

The PBGC has since determined that the interim regulation needs several changes. Accordingly, the PBGC is proposing to revise the regulation as described herein and requests public comments on this proposal.

The Proposed Regulation

In general, the proposed revision preserves the organization of the interim regulation. However, the PBGC has rearranged a few provisions. The subject matter of portions of interim §§ 2642.5(a) and 2642.12 and all of interim § 2642.5(c) is now in revised §§ 2642.1(a) and 2642.2. These provisions are descriptive (rather than prescriptive) and clarify the purpose of the regulation, which is the subject of Subpart A. Revised § 2642.1(a) now contains a brief description of the four statutory allocation methods and the basic statutory rules on the applicability of allocation methods to plans of various kinds. Revised § 2642.2 describes the statutory exceptions to these basic rules.

Modifications Not Subject To PBGC Approval

As in the interim regulation, Subpart B covers changes in a plan's allocation method that may be made without PBGC approval. Principal among these changes is adoption of one of the other statutory allocation methods. Section 4220(a) of ERISA allowed such changes without PBGC approval for the first 36 months after the effective date of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act (originally April 29, 1980; since changed to September 26, 1980). This 36-month period has now expired. Thus, plan amendments adopting one of the statutory allocation methods require PBGC approval. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods.

Revised § 2642.5 reflects the PBGC's class approval of amendments adopting statutory allocation methods. It thus represents a change from the corresponding provisions in the interim regulation (which followed the 36-month rule), as well as a consolidation of provisions that were separately stated in the interim regulation. Section 2642.5(a), pertaining to nonconstruction industry plans, is derived from interim § 2642.5(a) (last sentence) and (b). Revised § 2642.5(b), pertaining to construction industry plans, comes from the last sentence of interim § 2642.12. Together, these provisions authorize the adoption, without PBGC approval, of two types of changes in a plan's allocation method. One type of change thus allowed is the adoption of a modification to the plan's allocation method; the permissible modifications are described in Subpart B. The second type of change allowed by § 2642.5 is the adoption, by any plan other than a construction industry plan, of one of the statutory alternative allocation methods.

The PBGC has carried over § 2642.6, which deals with the contributions used in determining allocation fractions, from the interim regulation without substantive change. In a few places, however, the PBGC has clarified some of the wording. For example, in § 2642.6(a), the wording now makes clear that the PBGC does not consider withdrawal liability payments and amounts that employees contribute to be contributions for purposes of computing allocation fractions under the presumptive, modified presumptive and rolling-5 methods.

Similarly, the PBGC has added language in § 2642.6(b) to clarify that, in computing the denominator of an allocation fraction under any of the § 2642.6(b) modifications, if a plan includes contributions in the "total amount contributed" for one year, it may not also count the same contributions as delinquent contributions for another year in computing the same denominator. The PBGC has reworded paragraphs (b)(2) and (b)(3) of § 2642.6 to specify exactly what contributions a plan is to take into account under each alternative in the computation of allocation fractions. Finally, revised § 2642.6(b)(4)(i) reflects the change in the effective date of the withdrawal liability provisions of ERISA.

That date change also appears in revised § 2642.6(c). More significantly, the PBGC has reworded § 2642.6(c) to correct an incomplete description of the time period that a plan is to look at in determining which employers' contributions are excluded under the statute in computing allocation fractions. Under the presumptive, modified presumptive and rolling-5 methods, plans must exclude from the computation of any such fraction the contributions of all employers that have ceased to contribute to the plan or ceased covered operations before the end of the period of plan years used to determine the fraction. The interim regulation excluded contributions by all employers whose cessations occurred

before the end of the plan year preceding the withdrawal for which the fraction was being determined. This is correct for some fractions but not for others. The reworded provision excludes contributions by all employers that had withdrawn before the end of the period of plan years used to determine the fraction. As modified, the provision is correct for all fractions.

The PBGC has deleted interim § 2642.6(d) from the revised regulation. That paragraph provided examples of the operation of the provisions of § 2642.6(c). The examples did not deal with all aspects of amendments made under those provisions and in some cases might have been misunderstood.

The substance of § 2642.7 (a) and (b) remains unchanged. The PBGC has deleted § 2642.7(c), which, under the interim regulation, authorized plans to apply the denominator modifications described in § 2642.6 to certain denominators used in the direct attribution method. Since plans using the direct attribution method must have complete records on all employers, they do not need the administrative relief afforded by § 2642.6. Furthermore, the denominators described in section 4211(c)(4)(D) (ii) and (iii) under the direct attribution method cover the lifetime of the plan and include an interest factor. They are thus significantly different from the denominators used under the other methods, which are limited to ten years and do not include interest. Use of the denominator modifications described in § 2642.6 may therefore introduce greater inaccuracies under the direct attribution method than under other methods. Such inaccuracies appear unjustified in the absence of a significant need for administrative relief.

Section § 2642.8 of the revised regulation would allow an additional modification to the presumptive method without PBGC approval. The presumptive method allocates to employers shares of a plan's unfunded vested benefits, determined as of the end of the last plan year before the effective date of the Multiemployer Pension Plan Amendments Act of 1980, and shares of annual "change amounts" for subsequent years, based on the amount of increase or decrease in unfunded vested benefits each year. In a year when unfunded vested benefits decrease, the change amount for that year can be negative—*i.e.*, a credit. If a plan that has had unfunded vested benefits reduces them to zero, the total credits will, in the aggregate, offset the total charges. For a particular employer, however, credits and charges may not balance.

In Opinion Letter 83–19 (August 11, 1983), the PBGC took the position that a withdrawing employer may incur withdrawal liability under the presumptive method even though the plan has no unfunded vested benefits. The PBGC has received a request for reconsideration of Opinion Letter 83–19, which is the subject of a separate notice inviting public comment.

If the PBGC concludes that the position stated in Opinion Letter 83–19 is a correct interpretation of the statute, then new § 2642.8 would permit a plan with no unfunded vested benefits, other than a construction industry plan, to avoid assessing withdrawal liability under the presumptive method by setting the unamortized amounts under section 4211(b)(1) (A), (B), and (C) at zero for the year in which full funding is achieved and all prior years. This adjustment would operate whenever vested benefits became fully funded.

If the PBGC determines that the position taken in Opinion Letter 83–19 is incorrect, and that ERISA does not require the assessment of withdrawal liability by plans with no unfunded vested benefits, then new § 2642.8 would provide a specific method for implementing a plan's change in status when its vested benefits become fully funded.

The PBGC requests comments on its proposal to add new § 2642.8 to the revised regulation.

Modifications Subject To PBGC Approval

Under the proposed regulation, the PBGC has added a new § 2642.11(b) to incorporate the next-to-last sentence of interim § 2642.12. That sentence and interim § 2642.11(a), both of which dealt with changes to allocation methods that are subject to PBGC approval, are carried over from the interim regulation without any change in substance, although the PBGC has modified their wording.

Revised § 2642.11(c) is a new provision. It prohibits the use of any allocation method that systematically and substantially overallocates unfunded vested benefits, *i.e.*, that consistently over time allocates to contributing employers an aggregate amount of unfunded vested benefits that exceeds 100% of the plan's unfunded vested benefits.

An example of such a method is one under which an employer's withdrawal liability is the greater of the amounts determined under two different allocation methods. In the past, the PBGC has approved such methods because they do not pose a risk of loss to participants and the insurance program. Further analysis, however, has led the PBGC to conclude that systematic overallocation, except when rendered necessary by compelling administrative considerations, is contrary to the intent of the statute.

In section 4211(b) and (c), Congress has provided four examples of what an "allocation method" is. While these four methods vary in the means that they use to allocate unfunded vested benefits among employers, they are uniform in allocating, to the extent feasible, 100% of total unfunded vested benefits. ERISA alludes to this characteristic of an "allocation method" in section 4211(c)(5)(B), which requires that "any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits . . . ."

The legislative history of the Multiemployer Pension Plan Amendments Act indicates that Congress sought through withdrawal liability to achieve an equitable allocation of plan liabilities among all employers. Thus, a Senate floor explanation of withdrawal liability stated:

> [T]he bill generally requires that all withdrawing employers fund a share of the plan's unfunded liabilities when they withdraw. . . . The Committees support the proposed withdrawal liability rule as a way of better assuring equity among employers . . . . (126 Cong. Rec. 20193 (July 29, 1980.)

The limited degree of overallocation that may be produced by the statutory allocation methods or the modifications described in Subpart B of this regulation has the acceptable and legitimate purpose of reducing what would otherwise be an overwhelming administrative burden. For example, the numerators of the allocation fractions under the presumptive, modified presumptive, and rolling-5 methods are the amounts that the withdrawing employer was *required* to contribute during a specified period, while the denominators are the amounts that all employers *actually* contributed in the aggregate. If any employer has contributed less than its required amount, the sum of all employers' fractions will exceed 100% of the plan's unfunded vested benefits. This overallocation is nevertheless appropriate, first, because it is unlikely to be substantial and, second, because there is no administratively feasible alternative. To use required contributions as the denominator would necessitate annual audits of all employers' contributions; to use actual contributions as the numerator would

reward employers that failed to meet their obligations to the plan.

When a plan creates a custom allocation method, no similar necessity for overallocation exists, and the PBGC has concluded that the inequity of imposing an artificially high liability on early-withdrawing employers is not justified by the consequent increase in plan assets. Plans that have previously adopted such methods may not continue to apply them after the effective date of this revised regulation. See § 2642.14.

There are extensive language changes in revised § 2642.11(d), derived from interim § 2642.11(b), but the PBGC intends these changes only for clarification. The PBGC has deleted interim § 2642.11(c), which contained a special rule concerning the effective date of plan amendments adopted on or before January 31, 1981, because it is no longer necessary. The PBGC has also deleted a related provision, interim § 2642.13(a), regarding the time for submitting such amendments to the PBGC.

Since the PBGC has incorporated interim § 2642.12 into revised §§ 2642.1(a), 2642.2(a), 2642.5(b) and 2642.11(b), that section has been deleted, and interim § 2642.13 is now § 2642.12. This section deals with PBGC approval of alternative allocation methods. The PBGC has revised it to reflect two substantial modifications in the approval procedure. The first revision is at the end of paragraph (a), where the PBGC has deleted a reference to date of filing. Under the revised rule, it is unnecessary to establish the date of filing, since the PBGC has deleted the time limit for PBGC action on approval requests. (The elimination of this limit is discussed at greater length below.)

The second important change in this section involves the information that the PBGC requires a plan to submit with an approval request. In order to ascertain whether an allocation method meets the condition for approval, the PBGC may need to study how the alternative method will operate. Originally, interim § 2642.13(d)(6) required that a request for approval of an alternative method contain an example demonstrating the application of the method in various circumstances. The interim regulation described these examples in §§ 2642.14 and 2642.15. The PBGC has since found that such examples are usually unnecessary to enable it to determine whether proposed alternative allocation methods satisfy the standards for approval. Therefore, the PBGC has deleted interim §§ 2642.14 and 2642.15, and revised § 2642.12(d) no longer contains the requirement that plans submit an example. The PBGC does, however, retain the right to request an example when needed (§ 2642.12(e)). Interim § 2642.13(d)(7) has become revised § 2642.12(d)(6), which the PBGC has reworded to make clear that a plan need supply only the allocation method in use immediately before the amendment that is being submitted. Finally, the PBGC has added a new provision, revised § 2642.12(d)(7), requiring submission to the PBGC of a statement certifying that notice of the adoption of the alternative allocation method has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan. This statement will serve to inform the PBGC that the plan has complied with section 4214(b) of ERISA in adopting the amendment changing its allocation method.

Revised § 2642.13 comes from interim § 2642.16. Paragraphs (a) and (b) of this section are essentially unchanged. The PBGC has substantially rewritten paragraph (c) to eliminate references to the requirement under the interim regulation that the PBGC act on approval requests within 120 days. The PBGC included this requirement, which is not in ERISA, in the interim regulation to assure plans that they could proceed quickly to implement changes in allocation methods immediately following adoption of the Multiemployer Pension Plan Amendments Act. That need for urgent action no longer exists. In most cases, furthermore, the primary impact of the 120-day rule was to create paperwork in connection with fixing (and notifying submitters of) the filing date, as successive materials were submitted to the PBGC in connection with a request for approval. Such successive submissions are often necessary in order to correct (or demonstrate the non-existence of) problems appearing on the face of amendments as initially submitted to the PBGC. Finally, the PBGC anticipates that it will, in fact, be able to continue ruling on these requests within 120 days after its receipt of all necessary information.

The proposed regulation adds a new § 2642.14 to deal with allocation methods that the PBGC has heretofore approved but that contravene revised § 2642.11(b) discussed above; *i.e.*, allocation methods that assess to employers the greater of two amounts of unfunded vested benefits. The PBGC proposes to prohibit the use of these methods after the effective date of the final regulation. If a plan sponsor of a plan that has been using such a method does not amend the method before the regulation's effective date, the plan will be deemed to have the allocation method that would be applicable under ERISA if the plan had never been amended, *i.e.*, the presumptive method. Since all of the two-pronged methods that the PBGC has approved have included some variant of the presumptive rule as one of the two allocation rules used, a change to the use of the presumptive rule alone should not create undue administrative burdens because plans will be able to use records they have been maintaining under their existing allocation methods.

The PBGC published a Multiemployer Bulletin dated March 6, 1985, announcing that it is considering the adoption of a regulation that would permit plans, without PBGC approval, to make certain modifications to their allocation methods that would ease the burden of complying with section 558 of the Tax Reform Act of 1984. This amendment will be the subject of a separate rule.

Compliance With Rulemaking Guidelines

The PBGC has determined that this proposed regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. ERISA requires the PBGC to establish, by regulation, rules for the adoption of modifications and alternatives to the allocation methods under secton 4211 of ERISA. This proposed rule would, if adopted, revise an existing regulation fulfilling that requirement.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, such plans represent less than 14% of all multiemployer plans covered by the PBGC (346 out of 2485). Further, small multiemployer plans represent only .4% of all small plans covered by the PBGC (346 out of 84,288). This regulation will affect only those plans that choose to

change their allocation methods. The PBGC estimates, based on its experience to date, that no more than 16 multiemployer plan sponsors per year will amend their plans under ERISA section 4211 in a manner requiring PBGC approval. Thus, the PBGC expects there to be very few small plans that will need to file amendment approval requests under these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

The collection of information requirements contained in this proposed regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Public Comments

The PBGC invites interested parties to submit comments on this proposed regulation. Comments on the collection of information requirements may be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for Pension Benefit Guaranty Corporation, Washington DC 20503. Other comments should be addressed to the Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006. The PBGC will make written comments available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each comment should include the commenter's name and address, identify this proposed regulation, and give reasons for any recommendation. The PBGC may change this proposal in light of the comments it receives.

List of Subjects in 29 CFR Part 2642

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, the PBGC proposes to revise 29 CFR Part 2642 to read as follows:

PART 2642—ALLOCATING UNFUNDED VESTED BENEFITS

Subpart A—General

Sec.

2642.1 Purpose and scope.
2642.2 Special rules for construction industry and IRC section 404(c) plans.

Subpart B—Changes Not Subject to PBGC Approval

2642.5 Changes not subject to PBGC approval.
2642.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.
2642.7 Modifications to the direct attribution method.
2642.8 Modifications to the presumptive method for plans with no unfunded vested benefits.

Subpart C—Changes Subject to PBGC Approval

2642.11 Changes subject to PBGC approval.
2642.12 Requests for PBGC approval.
2642.13 Approval of alternative method.
2642.14 Special rule for certain alternative methods previously approved.

Authority: Sections 4002(b)(3) and 4211 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D), Pub. L. 93–46, 88 Stat. 829, 1004 (1974), as amended by sections 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1208, 1302, 1228–29, 1232 (1980) (29 U.S.C. 1302(b)(3) and 1391 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D)).

Subpart A—General

§ 2642.1 Purpose and scope.

(a) *Purpose.* The Multiemployer Pension Plan Amendments Act provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: The presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 2642.2, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocation method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C of this regulation sets forth the criterja and procedures for PGBC approval of non-staturory alternative allocation methods. Section 4211(c)(5) of the Act also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B of this regulaiton contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under Subpart C.

(b) *Scope.* This part applies to all multiemployer plans covered by section 4021(a) of ERISA and not excluded by section 4021(b).

§ 2642.2 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in the next sentence, a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act, adopt, by amendment, one of the statutory alternative methods or a non-statutory allocation method. Any such amendment is subject to PBGC approval under Subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications to the presumptive method set forth in § 2642.6.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Internal Revenue Code (a plan established before January 1, 19854, as a result of agreement between employee representatives and the United States during a period of government operation, under seizure powers, of a major part of the productive facilities of an industry) or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods without PBGC approval; adoption of any other allocation method is subject to PBGC approval under Subpart C so this part. A section 404(c) plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in Subpart B.

Subpart B—Changes Not Subject to PBGC Approval

§ 2642.5 Changes not subject to PBGC approval.

(a) *General rule.* A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§ 2642.6, 2642.7 and 2642.8, without the approval of the PBGC.

(b) *Building and construction industry plans.* A multiemployer plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in § 2642.6 without the approval of the PBGC.

§ 2642.6 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *"Contributions made" and "total amount contributed".* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts (other than withdrawal liability payments) considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Internal Revenue Code. For plan years before section 412 applies to the plan, "the sum of all contributions made" or "total amount contributed" means the amount reported to the Internal Revenue Service or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on line 14(c) of that form. Employee contributions, if any, shall be excluded from the totals.

(b) *Changing the period for counting contributions.* A plan sponsor may amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph shall be applied consistently to all plan years. Contributions counted for one plan year may not be counted for any other plan year. If a contribution is counted as part of the "total amount contributed" for any plan year used to determine a denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Internal Revenue Code.

(2) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period that section 412(c)(10) of the Internal Revenue Code and regulations thereunder describe.

(3) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Internal Revenue Code and regulations thereunder.

(4) A plan sponsor may amend a plan to provide that—

(i) For plan years ending before September 26, 1980, "the sum of all contributions made" or "total amount contributed" means the amount reported on line 14(c) of Form 5500 and, for years before the plan was required to file Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the Internal Revenue Service; and

(ii) For subsequent plan years, "the sum of all contributions made" or "total amount contributed" means the amount described in paragraph (a) of this section, or the amount described in paragraphs (b)(1), (b)(2) or (b)(3) of this section.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that cease to have an obligation to contribute to the plan or cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), "significant withdrawn employer" means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of the Act; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1% of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan shall treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A "concerted withdrawal" means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

§ 2642.7 Modifications to the direct attribution method.

(a) *Error in direct attribution method.* The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum of the employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (c)(4)(B) of the Act, and the employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E) and allocated to the employer under section 4211(c)(4)(F). Plan sponsors should allocate unattributable liabilities on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of the Act, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method shall modify the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan" in section 4211(c)(4)(F) by substituting "subparagraph (B)" for "subparagraph (C)" in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of the Act, the employer's share of the plan's unattributable liability shall be

determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) The numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not less than five) ending before the withdrawal; and

(2) The denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

§2642.8 Modifications to the presumptive method for plans with no unfunded vested benefits.

(a) *General rule.* Subject to the restriction in paragraph (b) of this section, the plan sponsor of a plan using the presumptive method may amend the plan to provide that if, as of the end of any plan year, the plan has no unfunded vested benefits, then the unamortized amounts under section 4211(b)(1) (A), (B), and (C) of the Act as of the end of that plan year shall be deemed to be zero for purposes of applying the presumptive method to employer withdrawals occurring after that plan year.

(b) *Interest rate.* This section shall apply only if the interest rate used in the plan's valuation is no higher than the rate used to determine compliance for that plan year with Part 3 of Title I of the Act (the "minimum funding" standards).

Subpart C—Changes Subject to PBGC Approval

§ 2642.11 Changes subject to PBGC approval.

(a) *General rule.* Subject to the approval of the PBGC pursuant to this subpart, a plan, other than a plan that primarily covers employees in the building and construction industry, may adopt by amendment, any allocation method or modification to an allocation method that is not permitted under Subpart B of this part.

(b) *Building and construction industry plans.* Subject to the approval of the PBGC pursuant to this subpart, a plan that primarily covers employees in the building and construction industry may adopt, by amendment, a statutory or non-statutory allocation method applicable only to its employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of the Act, or any modification to an allocation method that is not permitted under § 2642.6

(c) *Substantial overallocation not allowed.* No plan may adopt an allocation method or modification to an allocation method that results in a systematic and substantial overallocation of the plan's unfunded vested benefits, such as a method that allocates to employers the greater of two amounts of liability determined under two allocation rules.

(d) *Use of method prior to approval.* A plan may implement an alternative allocation method or modification to an allocation method that requires PBGC approval before that approval is given. However, the plan sponsor shall assess liability in accordance with this paragraph.

(1) *Demand for payment.* Until the PBGC approves the allocation method or modification, a plan may not demand withdrawal liability under section 4219 of the Act in an amount that exceeds the lesser of the amount calculated under the amendment, or the amount calculated under the allocation method that the plan would be required to use if the PBGC did not approve the amendment.

(2) *Adjustment of liability.* When necessary because of the PBGC decision on the amendment, the plan shall adjust the amount demanded from each employer under paragraph (c)(1) of this section and the employer's withdrawal liability payment schedule. The length of the payment schedule shall be increased, as necessary. The plan shall notify each affected employer of the adjusted liability and payment schedule and shall collect the adjusted amount in accordance with the adjusted schedule.

§ 2642.12 Requests for PBGC approval.

(a) *General.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(b) *Who shall submit.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to submit.* The plan shall submit the request by mail or by hand to the Insurance Operations Department (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street NW., Washington, DC 20006.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the fully authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) that the Internal Revenue Service assigned to the plan sponsor and the three-digit Plan Identification Number (PIN) that the plan sponsor assigned to the plan, and, if different, also the EIN–PIN that the plan last filed with the PBGC. If the plan has no EIN–PIN, the request shall so indicate.

(4) The date the amendment was adopted.

(5) A copy of the amendment, setting forth the full text of the alternative allocation method or modification.

(6) The allocation method that the plan currently uses and a copy of the plan amendment (if any) adopting the method.

(7) A statement certifying that notice of the adoption of the amendment has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan.

(e) *Additional information.* In addition to the information listed in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information that the PBGC determines is necessary for the review of an alternative allocation method or modification to an allocation method.

§ 2642.13 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under Subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits directly attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and

differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of the Act.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to Part 2606 of this chapter.

§ 2642.14 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after the effective date of this section an allocation method that allocates to that employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Issued in Washington, D.C., this 28th day of August 1985.

William E. Brock,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving, and authorizing its chairman to issue, this notice of proposed rulemaking.

Edward R. Mackiewicz,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 85-21477 Filed 9-6-85; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

32 CFR Part 230

[DoD Instruction 1000.12]

Procedures Governing Banking Offices on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed part updates Department of Defense (DoD) policies and procedures concerning banking institutions that operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. Policies governing permissible service charges and fees are made less stringent and procedures for onbase office construction are clarified.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202-697-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19140 amended Title 32, CFR, Part 230 contains the existing Office of the Secretary of Defense (OSD) procedures for the operation of onbase banking institutions. Accompanying policies are contained at Part 231. Certain provisions, formerly applicable only to credit unions have, wherever possible, been made applicable to banking institutions. A new provision precludes performance of commercial banking operations by DoD activities; DoD Components are to rely upon commercially available sources. DoD Components are required to forward requests for establishment of military banking facilities (MBFs) to the DASD(MS). Reference to the $1.00 charge for domestic encashment of Treasury checks for non-accountholders is eliminated. Domestic banking institutions are permitted to adjust services and fees to maintain consistency with competing institutions or the onbase institution's branch-wide service offerings and fee schedule. Procedures are clarified for nonself-sustaining banking office construction of a building or renovation of government space. Lease duration is for the stated term or upon determining that the office is self-sustaining, whichever occurs first. The counting of dependents is prohibited when seeking to qualify under the 250 or 1,000 population rules for part- or full-time MBFs overseas. Component implementing regulations are to provide for support of overseas MBFs under terms of DoD contracts, thereby reducing procedural details formerly in the issuances. Overseas commanders having on base MBFs are required to "accept" services rendered and report service shortfalls under identified procedures. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions.

List of Subjects in 32 CFR Part 230

Banks, Military banking facilities, Savings and loan associations.

Accordingly, 32 CFR Part 230 is proposed to be revised to read as follows:

PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DoD INSTALLATIONS

Sec.

230.1 Reissuance and Purpose.
230.2 Applicability
230.3 Definitions.
230.4 Responsibilities.
230.5 General Operating Policies and Procedures.
Enclosure 1—Procedures for Establishing, Supporting and Terminating Onbase Banking Offices.
Enclosure 2—Operations of Onbase Banking Offices.

Authority: 10 U.S.C. 136

§ 230.1 Reissuance and Purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11 [1] concerning relationships with banking offices located on Department of Defense (DoD) installations.

§ 230.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

(b) Its provisions also pertain to all banking institutions that operate on DoD installations.

§ 230.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention: Code 301. located on Department of Defense (DoD) installations.

activated by a plastic debit card in combination with pushbottons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial installation and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking service at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent operated by a banking institution on a DoD installation. Also includes savings and loan association and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state or federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex and martial status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of (a) occupation or association or (b) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulating agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD installation A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed as "payday service facility."

Regulatory Agency. Includes the Office of the Comtroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve

Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loan Association. A state or federally chartered mutual or stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, that operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, to operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 230.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management & Personnel).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overses banking facilities and specify the charges or fees, or the basis for such charges or fees, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas banking facilities as depositaries and financial agents of the U.S. Government.

(4) Maintain liaison, as necessary, with Federal and equivalent state bank regulatory agencies as defined at enclosure 2 of DoD Directive 1000.11.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation for acquiring banking services to meet justified requirements at overseas DoD installations.

(6) Serve as principal liaison with banking institutions that operate banking offices on overseas DoD installations. In this capacity, monitor banking facility managerial and operational policies, procedures and operating results and take action as appropriate.

(7) Review DoD Component actions that contemplate removal for cause of a banking institution from an installation prior to final decision and referral to the appropriate regulatory agency.

(8) As necessary, negotiate government-to-government agreements for the provison of banking services on overseas DoD installations in accordance with DoD Instruction 2050.1.[2]

(9) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsecton F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsecton F.3. of DoD Directive 1000.11.

(d) The *Heads of DoD Components* shall:

(1) Prescribe procedures for soliciting banking institutions to establish banking offices on respective domestic DOD installations. Such procedures shall prohibit DOD personnel from subjecting banking institutions to any form of coercion either while banking arrangements are under consideration or after banking offices are established.

(2) Review proposals to establish banking offices on respective domestic DOD installations, select the banking institution making the best offer and recommend designation of that institution to the cognizant regulatory agency.

(3) Forward proposals to establish banking facilities to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

(4) Provide for liaison to banking institutions operating banking offices on respective domestic DOD installations.

(5) Supervise the use of banking offices on respective DOD installations within the guidance contained herein and in DOD Directive 1000.11.

(6) Evaluate the services provided by banking offices to ensure that they fulfill the requirements upon which establishment and retention of those services were justified.

(7) Examine practices and procedures of respective onbase banking offices to ensure that the welfare and interests of DOD personnel as consumers are protected, as set forth in DOD Directive 1344.7.[3]

(8) Assist respective onbase banking offices in developing and expanding necessary services for DOD personnel consistent with the provisions stated herein.

(9) Determine the level of logistic support to be provided to respective domestic banking institutions that submit reports reflecting nonself-sustaining status.

(10) Encourage the conversion of existing domestic banking facilities on respective installations to independent or branch bank status where determined to be feasible.

(11) Provide logistic support to overseas banking facilities under terms and conditions indentified in respective contracts.

(12) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas banking service or related actions emanating from overseas component commands.

(13) Refer matters requiring policy decisions or proposed changes to the provisions of this part or DOD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish banking offices in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate all banking offices in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations with the command area. Personnel assigned to security assistance positions will not be used to perform this function without the prior approval of the Director, Defense Security Assistance Agency.

§ 230.5 General operating policies and procedures.

(a) *Limitation on Service.* Only one banking institution is permitted to

[2] See footnote 1 to § 230.1

[3] See footnote 1 to § 230.1.

operate on a DoD installation, except under most unusual circumstances.

(1) If conditions at a particular installation reflect a demonstrated requirement for additional service, the banking institution operating the existing office shall be given the opportunity to provide such service before other banking institutions are considered.

(2) Thereafter, when conditions warrant consideration of a second banking institution on the installation, a request that includes full details and rationale shall be forwarded through channels to the DoD Component headquarters concerned for evaluation and appropriate action. The Head of the DoD Component, or designee, may approve and forward such requests to the cognizant regulatory agency after coordination with the DASD(MS).

(b) *Uniformity of Service.* To the maximum extent feasible, financial services provided on DoD installations shall be uniform for all DoD personnel. Such services shall be provided at overseas DoD installations under uniform service charges and fee schedules wherever possible.

(c) *Establishing Banking Offices.* (1) Banking offices shall be established on domestic DoD installations only with prior approval of the DoD Component concerned and the appropriate regulatory agency. Specific procedures are identified at enclosure 1. No commitment may be made to any banking institution regarding its proposal until a designation is made by the cognizant regulatory agency.

(2) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) shall operate on domestic DoD installations.

(3) Except under most unusual circumstances, banking facilities may be established only overseas and in those states that prohibit branch banking.

(4) At those domestic DoD installations where regular financial services cannot be provided due to lack of interest by the banking community, lack of available space on the installation, or other operational situations that restrict the introduction of banking offices, the DoD Component concerned may seek proposals from the financial community to install automated teller machines (ATMs).

(i) In acquiring such services, preference shall be given to proposals that offer shared-access ATMs.

(ii) The financial institutions selected is responsible for obtaining necessary regulatory agency approval before commencing ATM service.

(iii) Action taken in response to such proposals shall be exempt from the limitation in § 230.5(a). The availability of ATM service on an installation will not preclude the establishment of a banking office at a later time in response to a demonstrated requirement.

(5) The provision of banking services by means other than duly-chartered public sector banking offices or ATM service is subject to prior review and approval by the DASD(MS).

(d) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and onbase banking institution. As a minimum, each agreement shall include the following provisions:

(1) Service to be rendered and the conditions therefor. To the extent feasible, full financial services shall be provided; however, agreements entered into under this provision may not restrict the banking institution's right to adjust services and fees to maintain consistency with competing institutions or the banking institution's branch-wide service offerings and fee schedules.

(2) Banking institutions agreement to:

(i) Comply with this part, DoD Directive 1000.11 and implementing DoD Component regulations;

(ii) Indemnify and hold harmless the U.S. Government from (and against) and loss, expense, claim or demand to which the government may be subjected as a result of death, loss, destruction or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the banking institution; and

(iii) Favorably respond, whenever possible, to command requests for lecturers and printed materials to support consumer credit education programs. When banking office personnel are invited to participate in such programs, they shall ensure that the occasion is not used to promote the services of a particular financial institution.

(3) Agreement that neither the DoD Component concerned nor its representatives will be responsible or liable for the financial operation of the banking office or for any loss (including criminal losses), expense, or claim for damages arising from banking office operation.

(4) Installation (community) commander's agreement to provide support as specified at enclosure 1 of this part.

(e) *Liaison Officers.* In the interest of maintaining a viable relationship and effective line of communication, each installation commander with an onbase banking office shall appoint a bank liaison officer as defined at \$230.3.

(1) The bank liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase banking office.

(2) The liaison officer shall maintain regular contact with the banking officer manager to confer or assist in resolving customer complaints and to discuss or recommend improvements in the quality or quantity, or both, or provided services. However, neither the liaison officer nor his superiors shall become involved in the internal operations of the banking office.

(3) No person serving on the board of directors or in another official capacity with the banking institution may serve as the bank liaison officer or credit union liaison officer.

(f) *Military Personnel as Director of Banking Institutions.* (1) DoD personnel on military active duty may not serve as directors of banking institutions that operate onbase banking offices. Exceptions may be granted by the head of the Dod Component concerned only if the appointment is based upon a justified requirement for direct liaison between the banking institution and the installation commander. Under such circumstances, no more than one individual on active duty may serve as a director at any one time and then only if such service is rendered without compensation.

(2) Members of DoD reserve components called to active duty who have been serving as directors of banking institutions that operate onbase banking offices will not be required to resign those directorships because of active duty status.

(g) *Complaints Processing.*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase banking institution first shall attempt to resolve the problem by negotiation. Failing this, a written request for investigation shall be made in accordance with implementing DoD Component regulations to the cognizant regulatory agency. The request must clearly describe and give evidence of the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report any evidence of suspected malpractice by banking office personnel in accordance with

implementing DoD Component regulations to the cognizant regulatory agency.

(3) *Follow-up.* If action by the cognizant regulatory agency fails to resolve DoD Component concerns, a full report with recommendations shall be submitted to the DASD(MS). The DASD(MS) shall take appropriate follow-up action with the cognizant regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic Support.*—(1) *Categories of Domestic Banking Offices.* For the purpose of authorizing logistic support, banking offices are categorized either as self-sustaining or nonself-sustaining.

(i) A domestic banking office is considered to be self-sustaining until, based upon financial data provided by the banking institution, the DoD Component concerned determines it to be nonself-sustaining. Payment of rent for space and reimbursement for utilities furnished shall be required from self-sustaining banking offices. Nonself-sustaining banking offices may be granted rent-free and utilities under procedures prescribed by the DoD Component concerned.

(ii) Normally, a domestic banking office shall be in a nonself-sustaining status for at least 4 consecutive calendar quarters before qualifying for logistic support. Conversely, a nonself-sustaining banking office would not be designated as self-sustaining until it had experienced 4 consecutive quarters of profitiable operation.

(2) *Detailed Procedures.* Details of required and authorized support for onbase banking offices are provided at enclosure 1.

(i) *Termination of Banking Service.*—(1) *Termination of Operations by the Banking Institution.* Should an onbase banking office plan to terminate its operations, it should so notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. If need be, the commander shall attempt to work out a mutual agreement whereby the banking office can continue operations until other arrangements can be made. Upon such notification, the commander immediately shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with § 230.5(c).

(2) *Termination for Cause.* If, after discussion with banking institution officials, the installation commander determines that the operating policies of the banking office are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a banking office from the installation shall be made only after approval by the DoD Component headquarters with the concurrence of the DASD(MS) and the cognizant regulatory agency.

Enclosure 1.—Procedures for Establishing, Supporting and Terminating Onbase Banking Offices

A. Establishing Banking Offices

1. *General.* DoD Components shall review banking institution proposals and recommend selections in accordance with § 230.5(c). Banking institutions selected for domestic onbase operation must obtain authority from the cognizant regulatory agency before commending such operation.

a. In the case of state-chartered institutions that are members of the Federal Reserve System, approval shall also be obtained from the Federal Reserve Bank for the district in which the proposed banking office is located.

b. In the case of state-chartered savings and loan associations, approval shall be obtained from cognizant state regulatory agencies. In the case of federally-chartered savings and loan associations, the determination shall be made by the Federal Home Loan Bank Board or its principal supervisory agent for the district in which the association does business.

2. *Domestic Banking Offices.*

a. Each DoD Component shall develop internal instructions that govern the submission and justification of requests to establish banking facilities on respective installations. The following information shall be included in requests to the DoD Component headquarters for banking facility establishment:

(1) Justification for establishment of a banking facility as opposed to another type of banking office.

(2) Such other supporting data as deemed necessary by the DoD Component concerned.

b. Proposals received by installation commanders to establish an independent or branch bank or a savings and loan association office shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

c. The DoD Component headquarters concerned shall evaluate each proposal to establish such offices and, if acceptable, recommend designation by the cognizant regulatory agency.

(1) If there is no existing banking office on the installation and it is determined that one is needed, the DoD Component concerned shall solicit proposals from other nearby banking institutions before making a determination.

(2) If a banking office other than a banking facility already is in operation on the DoD installation, the provisions of § 230.5(a)(1) apply.

(3) If the proposal offers to replace an existing banking facility with an independent or branch bank, the DoD Component concerned shall offer the banking institution currently operating the facility an opportunity to submit a proposal to convert the facility.

(4) With respect to a proposed independent or branch bank, preference shall be given to the banking institution that has operated the banking facility, provided that prior banking service has been satisfactory and that the institution's proposal is deemed adequate.

(5) Proposals to establish new banking facilities shall be forwarded to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

3. *Conversions of Domestic Banking Facilities to Independent or Branch Banks.* DoD Components shall encourage banking institutions that operate banking facilities to convert them to independent or branch banks, if consistent with state law. Proposals from a banking institution to convert an existing banking facility to an independent or branch bank shall be forwarded to the DoD Component headquarters concerned for its approval after coordination with the DASD(MS) and Treasury Department.

4. *Domestic Automated Teller Machine (ATM) Service.*

a. ATMs may be used to augment service provided by an onbase banking office.

b. An onbase banking facility may be authorized to site ATMs on the installation if it conforms to the following requirements. Further approval by the Treasury Department is not required. An onbase branch or independent bank may site ATMs on the installation by conforming to the following requirements and obtaining approval of the cognizant regulatory agency. Normally, regulatory approval is required only if ATMs are to be located at a site remote from the servicing banking office.

c. A banking institution that proposes to augment onbase banking office

service by installing one or more ATMs shall:

(1) Coordinate the ATM proposal through the installation commander under provisions of applicable DoD Component regulations;

(2) Provide a statement that the cost of ATM installation and maintenance shall be borne solely by the banking institution or in participation with other financial institutions; and

(3) Provide for access through debit transaction card, rather than limiting access solely to holders of a financial institution's credit card.

d. Upon approval, appropriate leases shall be negotiated in accordance with this part.

(1) No lease is required solely for siting an ATM within the existing banking office.

(2) Provided that required additional space in an existing installation structure 100 square feet of floor space or less, and modifications are made totally at banking office expense, such leases shall be negotiated and locally approved at the nominal consideration of $1.00 per annum. Such lease provisions also shall be offered if the banking office requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of maintenance and utilities shall be borne by the banking office.

(3) Leases pertaining to other situations shall be negotiated in accordance with section C, below.

5. *Overseas Banking Facilities Operated Under Contract.*

a. In implementing this part, each DoD Component shall develop internal instructions governing the submission of requests justifying the need for banking facilities proposed for establishment on respective overseas installations. Upon favorable review by the DoD Component headquarters concerned, such requests shall be submitted to the DASD(MS) with a recommendation for the inclusion in the appropriate contract, subject to the conditions set forth below.

b. As a general rule, banking facilities may be proposed when the population to be served meets the following criteria:

(1) *Full-Time Banking Facility.* Except in unusual circumstances, a full-time banking facility shall serve at least 1,000 DoD personnel, excluding dependents.

(2) *Part-Time Banking Facility.* Except in unusual circumstances, a part-time banking facility shall serve at least 250 DoD personnel, excluding dependents.

c. If the population at certain remote areas is not sufficient to qualify under the criteria for full- or part-time banking facilities, the installation (community) commander shall explore all other alternatives for acquiring limited banking services (such as check-cashing and accommodation service by disbursing officers and their agents) before requesting establishing of a banking facility as an exception to these provisions.

d. The data used to justify establishment of overseas banking facilities shall include but not be limited to:

(1) The approximate number of DoD personnel at the installation and any other persons who may be authorized to use the banking facility.

(2) The distances between the installation and the nearest banking facility and credit union offices, the operators of those institutions, and the installations (military communities) at which they are located.

(3) The availability of official and public transportation between the installation and the nearest banking facility and credit union office.

(4) The approximate loss of duty time as a result of DoD personnel leaving the installation to obtain banking services.

(5) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(6) Source(s) from which the military disbursing officer presently obtains operating and payroll cash, the frequency of these cash acquisitions, and the approximate dollar value obtained monthly.

(7) The name and location of the depositary now being used by the military disbursing officer to make official deposits for credit to the U.S. Treasury's General Account.

(8) The estimated savings to the military disbursing officer if a banking facility is established on the installation.

(9) A list of organizational and nonappropriated fund accounts, the name(s) and location(s) of the banking institution where presently deposited, and the average daily activity and balance of each account.

(10) A written description and photographs or drawings of the space proposed for banking facility use. The extent and approximate cost of required alterations, including the construction of counters and teller cages, shall be included.

(11) A statement detailing the requirements of the proposed banking facility for safes, a vault, or both; appropriate alarm systems; and camera surveillance equipment, where deemed necessary. The statement shall include the costs of such equipment and the manner in which it will be acquired.

(12) In countries where no U.S.-operated banking facilities presently exist, a statement as required by § 230.4(e)(1).

e. Establishment of an overseas banking facility is predicated upon:

(1) Designation of the facility contractor as a depositary and financial agent of the U.S. Government by the Fiscal Assistant Secretary of the Treasury;

(2) The availability of proposed banking contractors able and willing to bid for the operation of the facility and the resonableness of such proposals; and

(3) The availability of appropriated funds to underwrite such banking services.

6. *Other Overseas Banking Offices.* The banking and currency control laws of certain host countries do not permit U.S. banking institutions to operate banking facilities on DoD installations.

a. Commanders of installations (communities) in such countries shall forward requests for banking services, or unsolicited proposasl from local banks, through command channels with supporting data as required in paragraph A.5.d., above.

b. If the DoD Component concerned concurs in the request, it shall be forwarded to the DASD(MS) for approval and coordination with the Fiscal Assistant Secretary of the Treasury for designation of the parent banking institution as a depositary and financial agent of the U.S. Government.

c. Banking offices under this subsection shall become operational only after Treasury designation of the parent banking institution and an indication of the institution's willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits in a form acceptable to the DASD(MS) and the Fiscal Assistant Secretary of the Treasury.

B. Support of Onbase Banking Offices

1. *General.* Implementing DoD Component regulations shall provide for installation support to all onbase banking offices including:

a. Military or civilian guards (the latter to be used within the installation only), military police, or other protective services for necessary periods of time on paydays to accompany shipments of money from the parent banking institution or other source when such monies are primarily for use by the military disbursing officer, or at other times involving unusual circumstances when required to avoid undue risks or insurance costs on the part of the onbase banking office.

b. Central locator service, under conditions identified at enclosure 3 of DoD Directive 1000.11, when requested by onbase banking offices. This service whall be provided at no cost in accordance with DoD Instruction 7230.7.[4]

[4] See Footnote 1 to § 230.1

c. Debt processing assistance in accordance with DoD Directive 1344.9,[4] as limited by the Privacy Act guidelines set forth in enclosure 3 of DoD Directive 1000.11. If delinquent loans or dishonored checks are not recouped within 48 hours, banking institutions operating of DoD installations may bring them to the attention of the local commander, bank liaison officer or other designee, for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

d. Clearance procedures for personnel departing their installations so as to give the onbase banking office with adequate advance notice of the impending departure of its customers. The general purpose of a clearance is to report a change of address, reaffirm allotments or any outstanding debts, and receive counseling, if desired or appropriate. Clearance may not be denied to facilitate the collection of debts or the resolution of disputes between the financial institution and its departing customers.

e. Prohibition of traveler's check and money order sales by organizations other than the onbase banking office, post office and credit union.

2. *Domestic Nonself-Sustaining Bank Offices.* When a DoD Component determines that a banking office is in a nonself-sustaining status, it may furnish logistic support, as provided herein, without charge.

a. A nonself-sustaining banking office may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods of 5 years, as prescribed in DoD Directive 4165.6.[5] The cumulative total of space authorized to be provided at one or more locations is subject to the limitations contained in DoD 4270.1–M.[5]

b. All space assigned by the GSA, whether leased or in fedral office buildings, is reimbursable to the GSA at the standard level user charge under Public Law 92–313. Consequently, any GSA space required for banking office operations shall be assigned and charged by the GSA to the benefiting DoD Component.

c. In those exceptional cases when a nonself-sustaining banking office is authorized to construct its own building or use its funds to expand, modify or renovate government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. If shall be effective until the agreed date of expiration or until the banking office is determined to be self-sustaining, whichever occurs first. The provisions of section C. below, apply to the latter event

d. Other logistic support shall include the provisions of:

(1) Adequate customer and work areas in accordance with DoD 4270.1–M. In determining the adequacy of space, it is important that the banking office be housed in a building that both is accessible to the majority of DoD personnel on the installation and is located so as to permit maximum security.

(2) Steel bars, grillwork, security doors, a vault or safes (or both), burglar alarm system, other security features normally used by banking institutions, construction of counters and teller cages, and other necessary modifications and alterations to existing buildings as limited by DoD Directive 4270.241.

(3) Adequate utilities, custodial and janitorial services, and intrastation telephone service may be furnished at no cost. Costs for long-distance toll calls shall be borne by the banking office.

(4) Airconditioning, which is considered a normal utility for those banking offices located on installations that qualify for airconditioning under applicable DoD component regulations. Banking space is classified as administrative space on DoD installations.

(5) When available from local stock, typewriters, adding machines, other office equipment and office furniture loaned by memorandum receipt.

e. All maintenance, repair, rehabilitation, alterations, or construction for onbase banking offices shall be accomplished in accordance with DoD Directive 4165.2.[6]

f. Upon determination that a banking office has become self-sustaining, its no-cost lease or permit shall be cancelled and a lease negotiated in accordance with section C., below.

3. *Additional Support in Overseas Areas.*

a. *Banking Facilities Operated Under Contract.* In addition to the logistical support identified above, the following support shall be made available to banking facilities operating under DoD contract at overseas installations:

(1) U.S. Military Postal Service under DoD Directive 4525.6.[7] Mail must bear necessary postage.

(2) AUTOVON and AUTODIN as approved on a case-by-case basis.

(3) Certificates of nonavailability, if required by the designated property administrator, when items of office equipment or furniture requested by the banking facility are unavailable for loan on memorandum receipt.

(4) Vehicle registration and purchase of fuel from government-owned facilities for bank-operated vehicles if not in conflict with host country agreements. Vehicle registrations shall be subject to normal fees.

(5) Public quarters under DoD Instruction 4165.441 to key banking facility personnel who cannot obtain suitable, reasonably priced housing in the vicinity of the DoD installation. Charges for rent shall be in accordance with DoD Instruction 4165.421.

(6) Travel of banking institution officials overseas as set forth in DoD Directive 4000.6.[8] Invitation travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(7) Other support as required under the terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts. Suggestions for change may be forwarded through military channels for consideration by the DASD(MS).

b. *Other Overseas Banking Offices.*

(1) Logistic support provided to such offices shall be negotiated with the parent banking institution and the resulting provisions incorporated into written operating agreements.

(2) Whenever possible, logistic support provided should be no more favorable than that available to domestic banking offices in the U.S. Whenever possible, parent banking institutions shall reimburse the DoD Component concerned for logistic support provided.

C. Leases of Government Real Property

1. *Government-Owned Buildings.* The lease of an existing structure to house a self-sustaining banking office shall be at appraised fair market rental value under the following terms and considerations:

a. The lease term shall be for 5 years, subject to renewal by mutual agreement and subject also to the right of the head of the DoD Component concerned to terminate the lease under conditions specified in paragraph C.2.a., below. If space occupied is under assignment from the GSA, the banking institution shall reimburse the DoD Component concerned at the standard level user charge rate for that space and other special services furnished through the GSA.

b. When the banking institution uses its own funds to modify or renovate existing government space, a lease may be negotiated for a period not to exceed 25 years. Duration of the lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

c. The lessee shall perform interior alteration and maintenance, and reimbursement shall be made by the lessee for utilities, custodial, janitorial and other services furnished.

2. *Government-Owned Land.*

a. Except as provided in paragraph B.2.c., above, land required for approved

[4] See footnote 1 to § 230.1

[5] See footnote 1 to §230.1l

[6] See footnote 1 to § 230.1.

[7] See footnote 1 to § 230.1.

building construction at bank expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6.[9] Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or one (or more) of the following events and at the option of the government, structures and other improvements erected thereon shall be conveyed to the government without reimbursement or removed and the land restored to its original condition:

(1) Installation inactivation, closing or other disposal action; or

(2) Termination of the banking institution's lease under § 230.5(i).

b. When a banking institution participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the banking office.

c. When, under the terms of a lease, title to improvements passes to the government, arrangements shall be made:

(1) By no-cost permit or license for the continued occupancy of those improvements by a nonself-sustaining banking office if it continues to be nonself-sustaining. When the square footage involved exceeds that authorized in DoD 4270.1–M, the banking office shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space, or

(2) By lease for continued occupancy of those improvements by a self-sustaining banking office at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and reimburse the cost of utilities and services furnished in accordance with DoD Directive 4000.6.[10]

3. *Other Lease Considerations.*

a. When the term of the lease exceeds 5 years, Title 10 U.S.C. section 2667(b)(1) requires that a Military Department Secretary, or designee for such purposes, determines that a term in excess of 5 years will promote the national defense or be in the public interest.

b. Leases executed prior to issuance of this part may not be disturbed unless a lessee specifically requests that a lease be renegotiated under these provisions. No lease contract may be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the government, except as provided in § 230.5(h).

D. Construction of Bank Buildings

Proposals by banking institution officials to construct buildings on domestic DoD installations at bank expense must be reviewed and reported in accordance with DoD Instruction 7700.18.[1] In support of each construction proposal, the banking institution shall provide written assurance that:

1. It understands the potential for loss of the building in the event of installation closure or other delimiting condition identified in paragraph C.2.a., above;

2. The proposed building will be confined to the needs of the banking office and will not be used to house other activities; and

3. It agrees to be financially responsible for and to reimburse the U.S. Government for any maintenance, utilities and other services furnished. Rates shall be established in conformance with DoD Directive 4000.8 and shall be confirmed by a written agreement between the DoD installation and the banking institution.

E. Banking Office Terminations

1. *Domestic Banking Facilities.*

a. The installation commander shall notify the DoD Component headquarters concerned if a banking facility has been placed in an inactive status or if personnel reductions at the DoD installation have reduced banking facility operations below a justifiable level. The DoD Component shall advise the DASD(MS) and the Fiscal Assistant Secretary of the Treasury so that appropriate action may be taken to terminate the banking institution's authority to operate the banking facility.

b. In general, a banking facility may be terminated by the parent banking institution provided that notice in writing is furnished to the Treasury Department and the installation commander not less than 90 days before the closing date. In such cases, the Treasury Department will terminate the banking institution's authority to operate the banking facility, and the DoD Component concerned shall determine the feasibility of requesting another banking institution to provide banking service at the installation.

2. *Other Domestic Banking Offices.*

a. Requests for termination for cause shall be processed in accordance with §230.5(i)(2).

b. Banking offices other than banking facilities may be terminated by the parent banking institution provided written notice is furnished to the installation commander not less than 90 days before the closing date.

3. *Overseas Banking Facilities Operated Under Contract.*

a. The installation (community) commander shall, through DoD Component channels, notify the DASD (MS) when personnel reductions or other situations at the DoD installation (military community) have reduced banking facility activity below a level that justified continued operation.

b. Such notifications shall indicate whether a part-time facility should be established and the number of hours and days per week that such an operation is justified.

4. *Other Overseas Banking Offices.* Terminations shall be effected under termination clauses in respective operating agreements. Notice of intent to terminate, including the closing date, shall be forwarded by the overseas component commander to the DoD Component concerned. The DoD Component shall so notify the DASD(MS) and Fiscal Assistant Secretary of the Treasury so that the banking institution's authority as a depositary and financial agent of the U.S. Government may be revoked.

F. Notification of Banking Offices

Each DoD Component shall insure that banking institutions that operate one or more offices on respective DoD installations are provided a copy of its regulation that implements this part and DoD Directive 1000.11.

Enclosure 2.—Operations of Onbase Banking Offices

A. Services Rendered

1. To Individuals and Nonappropriated Fund Instrumentalities.

a. Normally, banking offices shall provide the same services on DoD installations as are provided in the local community. Service charges or fees levied for such services may not exceed those customary for the banking institution that operates the banking offices, with the following exceptions:

(1) There will be no charge to cash Treasury checks for accountholders.

(2) A reasonable charge may be made for cashing personal checks; however, checks drawn on the banking institution operating the banking office shall be cashed without charge provided sufficient collected funds are on deposit to cover such checks.

[9] See footnote 1 to § 230.1.

[10] See footnote 1 to § 230.1.

b. Counseling service shall be made available without charge to individual accountholders. Such services shall include helping members (particularly youthful or inexperienced and young married families) to budget and solve financial problems. Special attention shall be given to the counseling of military members in junior enlisted grades who apply for loans.

c. In accordance with accepted banking practice, policies on loans to individuals shall be as liberal as possible while remaining consistent with the overall interests of the banking institution and its stockholders.

(1) Onbase banking offices must strive to provide the best possible service to all customers. Such offices that evidence a policy of discrimination in their loan services are in violation of this instruction. In resolving complaints of discrimination, the installation commander will follow procedures specified in §230.5(g)(1).

(2) Onbase banking offices shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase banking office refer a prospective borrower to an offbase office of the same institution, it shall advise the latter office that the DoD requires compliance with the Standards of Fairness before executing the loan or credit agreement.

2. To Disbursing Officers.

a. Upon request, banking offices are expected to provide payroll cash to military disbursing offices. Local operating funds may be expended if the banking office requests reimbursement for costs incurred.

b. When so authorized, banking offices shall accept deposits for credit to the Treasury's General Account.

B. Staffing

1. Onbase banking offices are expected to be adequately staffed commensurate with banking industry standards for similar numbers of accountholders and financial services rendered.

2. Remote service locations at the same installation may be staffed with one person, provided that there is a direct courier or message service to the main onbase banking office.

3. All staffing shall be accomplished in full compliance with the spirit and intent of the equal employment opportunity policies and programs of the Department of Defense in accordance with DoD Directive 1100.15.[11]

4. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase banking office. However, off-duty DoD personnel may be employed by a banking office if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

C. Hours of Operation

1. *General.* Onbase banking offices may conduct operations during normal duty hours provided there is no undue interference with the performance of official duties. Banking offices are encouraged to set operating hours that meet the needs of the installation, their customers, and bank management. ATMs may be used to provide expanded service and operating hours.

2. *Overseas Banking Facilities Operated Under Contract.* Although respective contracts limit the number of operating hours per week, installation (community) commanders and banking facility managers are encouraged to agree on the specific days and hours of operation that best meet local needs.

a. Operating days may include Saturdays and operating hours may include evening hours when necessary to complement or parallel other retail service available to DoD personnel, provided the contractor agrees to provide such service at no additional cost to the government.

b. When cost implications are involved, the installation (community) commander shall forward his request for expanded or modified days or hours of operation, with a justification therefor, through military channels for consideration by the DASD(MS).

D. Deposit Insurance

Domestic onbase banking offices must provide insurance coverage by the FDIC for commercial banks or FSLIC for savings banks and savings and loan associations. A banking office not maintaining such insurance shall be suspended from onbase operation.

E. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 [12] and 1418.4 [12] to establish sound credit and savings practices through onbase banking offices.

1. The banking institution will credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement of loan proceeds to the banking office's customer. Allotments voluntarily initiated to a banking office shall continue in force at the option of the allotter.

F. Advertising

1. Advertising of onbase banking services shall be in accordance with policies set forth in DOD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.41 [13] and DoD Directive 5120.431) is prohibited with the exception of insert advertising in the *Stars and Stripes* overseas.

3. The use of the Armed Forces Radio and Television Service to promote a specific financial institution is prohibited (DoD Instruction 51210.201).

4. Onbase banking offices may use the unofficial section of the installation daily bulletin, provided space is available, to inform DOD personnel of financial services and announce seminars, consumer information programs and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising such as specific interest rates on savings or loans.

5. Onbase banking offices may use onbase information bulletin boards for announcements of a broad general nature that complement the installation's financial counseling and thrift promotion programs. Onbase banking offices may use installation message center services to distribute reasonable numbers of announcements to units for display on informational bulletin boards, provided such does not impose an unreasonable workload on the distribution system.

G. Supplemental Conditions for Overseas Operation

1. *General.* Overseas banking facilities will operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

2. *Authorized Customers.* Respective banking contracts specify personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals and organizations that qualify for individual

[11] See footnote 1 to § 230.1

[12] See footnote 1 to § 230.1.

[13] See footnote 1 to § 230.1

logistic support under the regulations of the DoD Component concerned, provided that use of banking services is not precluded by status of forces or other intergovernmental agreement or local law.

3. Services Rendered. Services to be rendered and the charges therefor are specified in respective contracts. Suggestions for expansion or modification of authorized services, fees or charges may be forwarded through military channels for consideration by the DASD(MS). Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host country law.

4. Acceptance of Services Rendered. DoD Component implementing regulations shall provide that each commander with a banking facility serving his installation (military community), or a designee, shall:

a. Review monthly income, expense and activity statements provided by full-time banking facilities.

b. Report any deficiency in the delivery of banking services under current contracts to the banking facility manager within 7 calendar days of the identification of the deficiency. If the deficiency is not remedied within 30 calendar days after its identification, the commander shall report the deficiency through military channels to the DASD(MS).

5. Other Operating Conditions.

a. Both the banking facility contractor and DoD disbursing officers shall ensure that cash management practices minimize the cash required to meet joint needs.

b. Banking facility provision of foreign currencies to authorized customers shall be in accordance with DoD Directive 7360.111.

c. When military payment certificates are prescribed for the area in which the overseas banking facility is operating, they shall be used in accordance with DoD Instruction 7360.5 [14] and implementing command regulations.

d. Overseas major commanders shall cooperate with banking facility contractors in developing and maintaining plans for the provision or termination of banking services in the event of hostilities or other emergencies.

6. Other Overseas Banking Offices.

a. Operating agreements shall specify authorized customers, services rendered and charges therefor, and conditions of operation. To the extent feasible, services and charges shall be negotiated to at least parallel those provided by banking facilities operated under the DoD banking contracts.

b. Before such agreements are executed, they shall be coordinated with the Unified Commander, or his designee, and forwarded to the DoD Component concerned for coordination with the DASD(MS) and approval.

Linda M. Lewson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1985.

[FR Doc. 85-21479 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

[14] See footnote 1 to § 230.1

Office of the Secretary of Defense

32 CFR Part 231

[DoD Directive 1000.11]

Financial Institutions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed Rule.

SUMMARY: This proposed part updates Department of Defense (DoD) policies and procedures concerning banking institutions that operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. Policies governing permissible service charges and fees are made less stringent and procedures for onbase office construction are clarified.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202-697-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19138 amended Title 32, CFR, Part 231 contains the existing Office of the Secretary of Defense (OSD) policies for the operation of onbase banking institutions. Accompanying procedures are contained at Part 230. Certain provisions, formerly applicable only to credit unions have, wherever possible, been made applicable to banking institutions. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions.

List of Subjects in 32 CFR Part 231

Banks, Military banking facilities, savings & loan associations.

Accordingly, 32 CFR Part 231 is proposed to be revised to read as follows:

PART 231—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.

231.1 Reissuance and Purpose
231.2 Applicability
231.3 Definitions
231.4 Objectives
231.5 Policies
231.6 Responsibilities
Enclosure—Guideline for Application of the Privacy Act to Financial Institutions on DoD Installations

Authority: 10 U.S.C. 136.

§ 231.1 Reissuance and purpose.

This part consolidates and clarified policies for financial institutions that serve DoD personnel on DoD installations worldwide. Associated procedures are contained in DoD Instruction 1000.10[1] and DoD Instruction 1000.12 [1]

§ 231.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

§ 231.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbottoms and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access at ATMs refers to the customer's ability

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention Code 301.

to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking services at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent bank operated by a banking institution on a DoD installation. Also includes savings and loan associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state or federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex and marital status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of (a) occupation or association or (b) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulation agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a band office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD Installation. A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loan Association. A state or federally chartered mutual stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231.4 Objectives

The objectives of this part are to ensure that:

(a) Arrangements for the provision of services by financial institutions are consistent among the DoD Components.

(b) Financial institutions operating on DoD installations provide and are provided support consistent with the policies stated herein.

§ 231.5 Policies.

(a) Duly-chartered financial institutions may be authorized to provide services where demonstrated and justified needs exist to facilitate the administration of public and quasi-public monies and enhance the morale and welfare of DoD personnel.

(b) Financial institutions shall be established on DoD installations only after approval by the cognizant regulatory agency and the DoD Component concerned.

(1) Given their unique role in promoting morale and welfare, credit unions operating on DoD installations shall be recognized and assisted by DoD Components at all echelons. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(2) Independent or branch banks, full-service credit unions, and savings and loan associations are the preferred sources of onbase service at domestic installations.

(3) Banking facilities shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, banking facilities shall be used only at overseas locations and in states that prohibit branch banking. In times of mobilization, it may become necessary to designate additional banking facilities as an emergency measure. Upon recommendation by a DoD Component, banking facilities are designated by the Treasury Department under authority contained in 12 U.S.C. 265.

(4) The extension of banking facility and credit union services overseas is encouraged, consistent with the policies stated herein and with pertinent status of forces agreements, bilateral arrangements, and local laws.

(5) Retail banking operations shall not be performed by DoD activities. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.[2]

(c) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in DoD Instruction 1000.10 and DoD Instruction 1000.12.

(d) Military disbursing offices, nonappropriated fund instrumentalities, and other DoD installation activities shall use servicing onbase financial institutions to the maximum extent feasible and consistent with sound management practice.

(e) The termination of operations by an onbase financial institution shall be initiated by a DoD Component only under one of the following conditions:

(1) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating the requirement for financial services.

(2) Active military operations preclude continuation of onbase financial services.

(3) The performance of the financial institution in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the procedures prescribed in DoD Instruction 1000.10 and DoD Instruction 1000.12. Termination actions begun on the basis of inadequate performance shall be substantiated by sufficient evidence and concurred in by the appropriate regulatory agency and the Assistant Secretary of Defense (Comptroller) before being carried out.

(f) DoD personnel who tender uncollectible checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and affect the public image of all DoD personnel. Furthermore, losses sustained by financial institutions on DoD installations as a result of these actions increase operating costs and may reduce the institutions' viability. Such added operating costs must be borne by other customers and, in some cases, may increase the cost to the government in providing these financial services. Military financial counselors or legal advisors shall recommend workable repayment plans that avoid further endangering credit ratings and careers of affected personnel. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only as a last resort when on other alternative will alleviate the situation.

§ 231.7 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C) shall:

(1) Develop and monitor policies and procedures governing the establishment, operation, and termination of financial institutions on DoD installations.

(2) Monitor industry trends, conduct studies and surveys and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinating as necessary with DoD Components, financial institutions and trade associations.

(3) Maintain liaison, as appropriate, with financial institution regulatory agencies at federal and state levels.

(4) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies to respective memberships and to aid in resolving mutual concerns that affect the provision of financial services.

(5) Coordinate with the Assistant Secretary of Defense (Force Management & Personnel) on all aspects of moral and welfare and Assistant Secretary of Defense (Acquisition & Logistics) on all aspects of logistic support for onbase financial institutions.

(6) Take final action on requests for exceptions to this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall develop and monitor policies and procedures governing logistic support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall advise the ASD(C) on all aspects of onbase financial institution services that affect the morale and welfare of DoD personnel.

(d) The *Heads of DoD Components* shall:

(1) Take action on requests to establish or terminate financial institution operations on respective installations subject to the provisions of DoD Instructions 1000.10 and 1000.12.

[2] See footnote 1 to § 231.1

(2) Supervise and encourage the use of financial institutions on DoD installations as a means to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of onbase activities.

(ii) Assist DoD personnel to manage their personal finances by participation in direct deposit programs and regular savings plans. Use of onbase financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(3) Recognize the right of military personnel and civilian employees to organize and join credit unions formed under duly constituted authority, and encourage the application and expansion of the principles of the credit union movement throughout the DoD establishment.

(4) Encourage and assist duly-chartered financial institutions to provide complete financial services on DoD installations where there is a demonstrated need for such services.

(5) Establish liaison, as appropriate, with federal and state regulatory agencies and financial institution trade associations, leagues, and councils.

(6) Provide debt processing assistance to onbase financial institutions in accordance with the Privacy Act guidelines set forth in the enclosure to this part.

Enclosure—Guidelines for Application of the Privacy Act to Financial Institutions on DOD Installations

A. The following guidelines govern the application of DoD Directive 5400.11 [3] to those financial institutions that operate under this Directive.

1. Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of Title 12, U.S.C. 1751.

a. These financial institutions do not fit the definition of "agency" to which the Privacy Act applies: ". . . any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or an independent regulatory agency." (Title 5 U.S.C. 552(e) and 552a(a)(1)).

b. Nor are they "government contractors" within the meaning of Title 5, U.S.C. 552a(m), as they do not operate a system of records on behalf of an agency ". . . to accomplish an agency function." According to the Office of Management and Budget Privacy Act Guidelines (OMB Circular A-108), the provision relating to Government contractors applies only to systems of records ". . . actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act." Clearly, the subject institutions do not meet these criteria.

c. Since the Act does not apply to them, these financial institutions are not required to comply with the provision of Title 5, U.S.C. 552a(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within onbase banking and credit union offices.

2. The financial institutions concerned hold the same position and relationship to their accountholders and members and to the government as they did before enactment. Within their usual business relationships, they still are responsible for safeguarding the information provided by their accountholders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

3. Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their accountholders or members:

I hereby authorize the Department of Defense and its various Departments and Commands to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

When the financial institution presents such signed authorizations, the military commands or installations shall provide the appropriate information.

4. Even though the agreement described in subsection A.3. has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment consistent with the Privacy Act, DoD Directive 5400.11,[4] and Freedom of Information Act, DoD Directive 5400.7.[4] Some examples of personal information pertaining to DoD personnel that normally can be released without the creation of an unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

5. In those cases in which DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, the remedy is to seek the locator assistance of the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor shall either furnish the individual's new official duty location address to the financial institution or forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance that the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department of Defense may, at its discretion, forward correspondence to the individual's last known home address. The individual may choose not to respond and the Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with it.

B. Questions concerning this guidance should be forwarded through channels to the Deputy Assistant Secretary of Defense (Management Systems), Office of the Assistant Secretary of Defense (Comptroller), The Pentagon, Washington, D.C. 20301-1100.

Dated: September 4, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 85-21480 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

[3] See footnote 1 to § 231.1.

[4] See footnote 1 to § 231.1.

32 CFR Part 231a

[DoD Instructon 1000.10]

Procedures Governing Credit Unions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This part codifies, for the first time, provisions concerning the operation of credit unions on DoD installations. The proposed rule provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions and contemplates a more proactive role by the Assistant Secretary of Defense (Comptroller). In order to assure consistent treatment, some rules

formerly applicable only to credit unions or to banks and savings and loan associations have been applied, wherever possible, to the other types of institutions. A new provision streamlines approval procedures for installation of automated teller machines. For credit unions, use of the ninety-five percent membership rule is clarified and a goal of January 1, 1988 is established for all onbase credit unions to acquire federal share insurance.

DATE: Written comments must be received by October 23, 1985.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301–1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202–697–8281.

SUPPLEMENTARY INFORMATION: Title 32, Code of Federal Regulations, contains the existing Office of the Secretary of Defense (OSD) procedures (Part 230) and policies (Part 231) for the operation of onbase banking institutions. These provisions, formerly applicable only to banking institutions have, wherever possible, been made applicable to credit unions. Data requirements to justify establishment of domestic onbase financial institutions are reduced. A new provision permits, subject to local negotiation and nominal consideration of $1.00 per annum, the lease of 100 square feet or less additional government building space or less than 250 square feet of land for bank or credit union installation of automated teller machines. Onbase financial institutions are asked to give installation commanders advance notice before public disclosure of planned termination. Office of the Assistant Secretary of Defense (Comptroller) will take a more proactive role in matters related to onbase financial institutions. Use of the 95% membership rule is clarified. Certification is required initially upon formation of the credit union, at 3-year intervals and upon renewal of each no-cost lease or license. Rent-free lease duration is for the stated term or upon failure to meet the 95% rule, whichever occurs first. The goal of January 1, 1988 is established for all onbase credit unions to acquire federal share insurance.

List of Subjects in 32 CFR Part 231a

Credit unions, Defense credit unions.

Accordingly, 32 CFR is amended to include Part 231a to read as follows:

PART 231a—PROCEDURES GOVERNING CREDIT UNIONS ON DoD INSTALLATIONS

Sec.

231a.1 Issuance and purpose.
231a.2 Applicability.
231a.3 Definitions.
231a.4 Responsibilities.
231a.5 Procedures.
Enclosure Operations of Defense Credit Unions

Authority: 10 U.S.C. 136.

§ 231a.1 Insurance and purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11 [1] concerning relationships with credit unions that serve Department of Defense (DoD) personnel.

§ 231a.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, the Defense Agencies and Washington Headquarters Services (hereinafter collectively referred to as "DoD Components").

(b) Its provisions also pertain to all credit unions that operate on DoD installations.

§ 231a.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds between a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbuttons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD Civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A non-commissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that, under its designation as a depositary and financial agent of the U.S. Government, specifically has been authorized by the Treasury Department to provide certain banking services at the installation. Such offices either may be self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. Includes stock or mutual savings and loan associations.

Banking Office. A banking facility, branch bank or independent bank operated by a banking institution on DoD installation. Also includes savings and loan associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an onbase location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act or similar state statute, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling service during normal working hours.

Defense Credit Union. A state of federally chartered credit union with a field of membership that primarily consists of DoD personnel.

Discrimination. Any differential treatment in the provision of services, including loan service, by a financial institution to DoD personnel and their dependents on the bais of race, color, religion, national origin, sex and marital status, age, rank or grade. However, if uniformly applied, the amount of credit extended may be directly based upon applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special government employees of all offices, agencies, and departments performing functions of a DoD installation (including nonappropriated fund instrumentalities); and their dependents.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120: Attention: Code 301.

On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings or building space. Rental is determined by a government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase land may not always be comparable to similar land in the local commercial geographic area recognizing, for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act and chartered, supervised and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membeship because of a common bond of (1) occupation or association or (2) employment or residence within a well-defined neighborhood, community or rural district. The field of membership is defined in the credit union's charter by the federal or state regulating agency.

Financial Institution. Any banking institution or credit union, or their subordinate offices or facilities, as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates 5 or more days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation. Directors and officers of such institutions usually come from the local business and professional community, thus differentiating such operations from countywide or statewide branch systems that consist of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials knew that an action or inaction violated a law or regulation, or both.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD Installation. A military installation (or community) located outside the states of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates less than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings and Loans Association. A state or federally chartered mutual or stock institution that is capable of providing complete financial services.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD credit union program, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management & Personnel).

(2) Maintain liaison, as necessary, with the National Credit Union Administration (NCUA) and equivalent state regulatory agencies.

(3) Review DoD Component actions that contemplate removal for cause of a credit union from an installation prior to final decision and referral to the appropriate regulatory agency.

(4) Take final action on requests for exception to the provisions of this part.

(b) The *Assistant Secretary of Defense (Acquisition & Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management & Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Heads of DoD Components* shall:

(1) Supervise the use of credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(2) Assist respective onbase credit unions in developing and expanding necessary services for DoD personnel, consistent with the provisions stated herein.

(3) Encourage DoD personnel to serve on credit union boards and committees on a voluntary noncompensatory basis when neither conflict of duty nor conflict of interest is involved as stated in DoD Directive 5500.7.[2] Such personnel may be allowed to attend credit union conferences and meetings in accordance with DoD Directive 1327.5,[2] Civilian Personnel Manual (CPM) Supplement 990-2 and CompGen Decision B-212457.

(4) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas credit union service or related actions emanating from overseas component commands.

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[2] See footnote 1 to § 231a.1.

(5) Refer matters requiring policy decisions or proposed changes to the provisions of this part or DoD Directive 1000.11 to the DASD(MS).

(e) The Commanders of Unified and Specified Commands, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish credit union service in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate all credit union service in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate credit union operations within the command area. Personnel assigned to security assistance positions will not be used to perform this function without the prior approval of the Director, Defense Security Assistance Agency.

§ 231a.5 Procedures.

(a) *Limitation on Service.* (1) Only one credit union is permitted to operate on a DoD installation, and its field of membership normally shall include all assigned DoD personnel. Where more than one credit union already exists, each is entitled to the benefits defined in this part as if it were located on a separate installation.

(2) Literature from competing credit unions may not be disseminated through installation activities, to include military exchange outlets, at locations served by onbase credit unions.

(b) *Establishing Domestic Credit Union Service.* (1) When there is a demonstrated need for credit union services, these services may be obtained by establishing a new full-service credit union or opening a branch office or facility of an existing credit union under the common bond principle.

(2) Each DoD Component shall develop internal instructions, consistent with the following, that govern the submission and justification of requests to establish credit unions on respective installations.

(i) DoD personnel seeking to establish either a full-service credit union or a branch or facility of an existing credit union shall submit a proposal to the installation commander for review. Such proposals shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

(ii) The DoD Component shall notify credit unions that operate on DoD installations of the need for service; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and recommend designation of a credit union to the cognizant regulatory agency for approval, with an information copy provided to the DASD(MS).

(iii) No commitment may be made to a credit union regarding its proposal until a selection is announced by the cognizant regulatory agency.

(c) *Establishing Overseas Credit Union Service.* (1) When the installation (community) commander determines that there is a demonstrated need for credit union services, these services may be provided by requesting establishment of a branch or facility of an existing Defense credit union. However, it must be recognized that the basic decision concerning such extensions of service rests with the credit union.

(2) In addition to the requirements stated in § 231a.5(b)(2) of this section, installation commanders will provide the following information in support of requests to higher headquarters for overseas credit union service:

(i) In countries not presently served, a statement concurred in by the Unified Commander that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation. Identify any conditions imposed by the host country.

(ii) The names and location of the nearest credit union branch or facility.

(iii) The distance between the installation and the nearest credit union branch or facility and the availability of any official or public transportation.

(iv) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(3) The DoD Component shall notify federal credit unions that operate on DoD installations of this need; review the specific proposals of interested credit unions; coordinate with its field commands as approprate; and, after coordination with the DASD(MS), recommend designation of a credit union to the NCUA for approval.

(4) Recommendations to the NCUA shall include identification of the primary installation from which the proposed branch would operate and the geographical territory in which any additional branches, facilities or mobile outlets would operate.

(5) No commitment may be made to a credit union regarding its proposal until a selection is announced by the NCUA. Upon receipt of NCUA approval, the DoD Component shall so notify the DASD(MS) and facilitate, as appropriate, the timely commencement of operations.

(d) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and the onbase credit union.

(1) Each agreement shall be confined to basic relationships and mutual support activities and may not involve internal operations of the credit union. The installation commander shall agree to provide support as specified in this part.

(2) Each credit union operating on a DoD installation shall agree to:

(i) Keep the installation commander advised of credit union operations;

(ii) Give the installation commander a copy of its monthly financial report and other local credit union publications;

(iii) Invite command representatives to attend its annual meetings and other appropriate functions;

(iv) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim or demand to which the government may be subjected as a result of death, loss, destruction or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the credit union;

(v) Maintain physical security of cash and cash items in a manner consistent with the requirements of the credit union's fidelity insurer. A copy of these requirements will be provided to the installation commander upon request.

(vi) Favorably respond, whenever possible, to command requests for lecturers and printed materials to support consumer credit education programs. When credit union personnel are invited to participate in such programs, they shall ensure that the occasion is not used to promote the services of a particular financial institution;

(vii) Provide that neither the DoD Component concerned nor its representatives shall be responsible for the financial operation of a credit union or for any expense, loss (including criminal losses), or claim for damages arising from credit union operations; and

(viii) Operate in accordance with the guidelines enclosed and comply with other provisions of this part, DoD

Directive 1000.11, and implementing DoD Component regulations.

(e) *Liaison Officers.* In the interest of maintaining a viable relationship and effective line of communication, each installation commander with an onbase credit union shall appoint a credit union liaison officer as defined in § 231a.3.

(1) The credit union liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase credit union location.

(2) The liaison officer shall maintain regular contact with the credit union manager to confer or assist in resolving member complaints and to discuss or recommend improvements in the quality or quantity, or both, of services provided to members. However, neither the liaison officer nor his superiors shall not become involved in the internal operations of the credit union.

(3) No person serving on the board of directors or in another official credit union capacity may serve as the credit union liaison officer or bank liaison officer.

(f) *Complaints Processing.*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase credit union first shall attempt to resolve the problem by negotiation. Failing this, a written request for investigation shall be made in accordance with implementing DoD Component regulations to the cognizant regulatory agency. The request must clearly describe and give evidence of the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report, in writing, any evidence of suspected malpractice by credit union personnel in accordance with implementing DoD Component regulations to the cognizant regulatory agency.

(3) *Follow-up.* If action by the cognizant regulatory agency fails to resolve local command concerns, a full report with recommendations shall be submitted to the DASD(MS). The DASD(MS) shall take appropriate follow-up action with the regulatory agency and apprise the respective DoD Component of progress or resolution.

(g) *Logistic Support.*—(1) *Membership Criterion.* (i) In accordance with section 124 of the Federal Credit Union Act, the provision of no-cost office space and related real property to onbase credit unions is limited to those credit unions having at least 95 percent of their membership composed of persons who are (A) either presently military or DoD civilian personnel or were at the time of admission to the credit union or (B) members of their families.

(ii) At 3-year intervals and upon renewal of each no-cost lease or license, the credit union shall provide a written certification, prepared on credit union letterhead and signed either by its president or general manager, that the credit union continues to meet the 95 percent criterion. This certification shall serve as justification and documentation for the allocation and continuation of available free government space, to include space renovated or constructed with credit union funds.

(2) *Criteria for Use of Space in Government-Owned Buildings.* (i) A credit union may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods of 5 years, as prescribed in DoD Directive 4165.6.[3] The cumulative total of space authorized to be provided at one or more locations is subject to the limitations contained in DoD 4270.1-M.[3]

(ii) A credit union that fails to meet the 95 percent criterion shall be charged fair market rental for space provided. In addition, a credit union whose field of membership does not encompass all DoD personnel assigned on the installation shall not be provided free government space. This latter limitation is waived in cases where more than one credit union already operates on the installation.

(iii) All space assigned by GSA, whether leased or in federal office buildings, is reimbursable to the GSA at the standard level user charge under Pub. L. 92-313. Consequently, the space required for credit union operations shall be assigned and charged by the GSA to the benefiting DoD Component. Such space then is subject to the provisions of paragraphs (g)(2) (i) and (ii) of this section.

(iv) When a credit union uses its own funds to expand, modify or renovate government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion, whichever occurs first. The provisions of paragraph (g)(2)(ii), of this seciton, apply to the latter event.

(3) *Utilities, Base Services and Equipment.* (i) When available, janitorial services, utilities (such as air-conditioning, heat and light), fixtures and maintenance shall be furnished at no cost to a credit union occupying space in a government building. Costs for other services, such as telephone lines, long-distance toll calls and space alterations shall be borne by the credit union.

(ii) When available from local stock, typewriters, adding machines, other office equipment and office furniture may be loaned to an onbase credit union on memorandum receipt.

(iii) Central locator service shall be provided under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by Defense credit unions. This service shall be provided at no cost in accordance with DoD Instruction 7230.7.[4]

(iv) DoD Components shall provide debt processing assistance to Defense credit unions in accordance with DoD Directive 1344.9 [1], as limited by the Privacy Act guidelines set forth in enclosure 3 of DoD Directive 1000.11. Unless otherwise prohibited, Defense credit unions may bring delinquent loans or dishonored checks to the attention of the local commander, credit union liaison officer or other designee, for assistance in effecting restitution of the amount due.

(v) DoD Components shall prescribe clearance procedures for personnel departing their installations so as to provide the onbase credit union with adequate advance notice of the impending departure of its members. The general purpose of a clearance is to report a change of address, reaffirm allotments or any outstanding debts, and receive counseling, if desired or appropriate. Clearance may not be denied to facilitate the collection of debts or the resolution of disputes between the credit union and its departing members.

(4) *Additional Support in Overseas Areas.* In addition to the logistic support identified above, the following support may be made available to Defense credit unions operating at overseas installations:

(i) Military postal service may be authorized in accordance with DoD Directive 4525.61.

(ii) AUTOVON and AUTODIN may be provided on a case-by-case reimbursable basis.

(iii) Travel of credit union officials overseas shall be as set forth in DoD Directive 4000.6.[5] Invitational travel

[3] See footnote 1 to § 231a.1

[4] See footnote 1 to § 231a.1

[5] See footnote 1 to § 231a.1

orders that authorize travel at no expense to the U.S. Government may be issued by the component commander for official onsite visits.

(h) *Construction of Credit Union Buildings.* Proposals by credit union officials to construct buildings on DoD installations at credit union expense must be reviewed and reported in accordance with DoD Instruction 7700.18.[6] In support of each construction proposal, the credit union shall provide written assurance that:

(1) It understands the potential for loss of the building in the event of installation closure or other delimiting condition specified in paragraph (i)(1) of this section.

(2) The proposed building will be confined to the needs of the credit union and will not be used to house other activities; and

(3) It agrees to be financially responsible for and to reimburse the U.S. Government for any maintenance, utilities and other services furnished. Rates shall be established in conformance with DoD Directive 4000.6 and shall be confirmed by a written agreement between the DoD installation and the credit union.

(i) *Leases of Government Land.* (1) Except as provided in paragraph (g)(2)(iv) of this section, land required for approved building construction at credit union expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or one (or more) of the following events and at the option of the government, structures and other improvements erected thereon shall be conveyed to the government without reimbursement or removed and the land restored to its original condition:

(i) Installation inactivation, closing or other disposal action; or

(ii) Termination of the credit union lease under paragraph (k) of this section.

(2) When a credit union participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the credit union.

(3) When, under the terms of a lease, title to improvements passes to the government, arrangements shall be made:

(i) By no-cost permit or license for the continued occupancy of those improvements by the credit union if it continues to meet the 95 percent membership criterion cited in paragraph (g)(1) of this section. When the square footage exceeds that authorized in DoD 4270.1–M [1], the credit union shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that space and associated maintenance of the premises and reimbursement for utilities and services furnished in accordance with DoD Directive 4000.6 [7]; or

(ii) By lease for continued occupancy of those improvements should the credit union no longer qualify under the 95 percent rule. The lease shall be at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and reimburse the cost of utilities and services furnished in accordance with DoD Directive 4000.6.

(j) *Automated Teller Machine (ATM) Service.* (1) ATMs may be used to augment service provided by an onbase credit union.

(2) An onbase credit union that proposes to augment its service by installing one or more ATMs shall:

(i) Coordinate the ATM proposal with the installation commander under provisions of applicable DoD Component regulations;

(ii) Provide a statement that the cost of ATM installation and maintenance shall be borne solely by the credit union or in participation with other financial institutions; and

(iii) Provide for access through debit transaction card, rather than limiting access solely to holders of a financial institution's credit card.

(3) Following any necessary regulatory agency approval and prior to implementation of service, appropriate leases shall be negotiated in accordance with this part.

(i) No lease is required solely for siting an ATM in the existing credit union office.

(ii) Provided that required additional space in an existing installation structure is 100 square feet of floor space or less, and modifications are made totally at credit union expense, such leases shall be negotiated and locally approved at the nominal consideration of $1.00 per annum. Such lease provisions also shall be offered if the credit union requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of maintenance and utilities shall be borne by the credit union.

(iii) Leases pertaining to other situations shall be negotiated in accordance with § 231a.5(g)(1) and (h).

(k) *Termination of Credit Union Service.*—(1) *Termination of Operations by the Credit Union.* Should an onbase credit union plan to terminate its operations, it should so notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. If need be, the commander shall attempt to work out a mutual agreement whereby the credit union can continue operations until other arrangements can be made. Upon such notification, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of credit union services is justified, action to establish a new credit union shall be taken in accordance with paragraphs (b) or (c) of this section.

(2) *Termination for Cause.* If, after discussion with credit union officials, the installation commander determines that the operating policies of the credit union are inconsistent with this part, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a credit union from the installation shall be made only after approval by the DoD Component headquarters with the concurrence of the DASD(MS) and the cognizant regulatory agency.

Enclosure—Operations of Defense Credit Unions

A. Staffing

1. Full services shall be provided by onbase credit unions that are staffed by:

a. A loan officer authorized to act for the credit committee;

b. An individual authorized to sign checks; and

c. A qualified financial counselor available to serve members during operating hours.

2. Exceptions to 1., above, may be approved by the DoD Component concerned in the case of newly-organized credit unions.

3. When an onbase credit union can support only minimum staffing, the counselor duties may be subsumed under one of the other positions required above.

4. Remote service locations at the same installation may be staffed with one person, provided that there is a direct courier or message service to the credit union's onbase main office.

5. All staffing shall be accomplished in full compliance with the spirit and intent of the equal employment opportunity policies and

[6] See footnote 1 to § 231a.1

[7] See footnote 1 to § 231a.1.

programs of the Department of Defense in accordance with DoD Directive 1100.15.[8]

6. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase credit union. However, off-duty DoD personnel may be employed by a credit union if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

B. Counseling

Counseling service shall be made available to members of Defense credit unions without charge. Such services shall include helping members (particularly youthful or inexperienced personnel and young married families) to budget and solve finacial problems. Special attention shall be given to the counseling of military members in junior enlisted grades who apply for loans.

C. Lending

1. In accordance with accepted credit union practice, lending policies shall be as liberal as possible while remaining consistent with the best interests of the overall credit union membership. Credit unions must strive to provide the best possible service to all members.

2. Defense credit unions that evidence a policy of discrimination in their loan services are in violation of this part. In resolving complaints of discrimination, the installation commander will follow procedures specified in § 231a.5(f)(1) of this part.

3. Defense credit unions shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase credit union branch refer a prospective borrower to an offbase office of the same credit union, it shall advise the latter office that the Department of Defense requires compliance with the Standards of Fairness before executing the loan or credit agreement.

D. Hours of Operation

Onbase credit unions may conduct operations during normal duty hours provided there is no undue interference with the performance of official duties. Credit unions are encouraged to set operating hours that meet the needs of the installation, its membership and credit union management. ATMs may be used to provide expanded service and operating hours.

E. Share Insurance

Credit unions serving on DoD installations that do not have federal share insurance shall establish the objective of acquiring such coverage by January 1, 1988. In the meantime, any share insurance, that is at least equal to that required by the NCUA for federal credit unions, may be obtained through the NCUA, a state-sponsored insurance program, or a private insurance plan will continue to satisfy this DoD requirement. A credit union not maintaining share insurance shall be suspended from onbase operations.

F. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1[8] and 1418.4[8] to establish sound credit and savings practices through Defense credit unions.

1. The credit union will credit members accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the intitiation of an allotment of pay become a prerequisite for loan approval or disbursement of loan proceeds to the credit union member. Allotments voluntarily initiated to a credit union shall continue in force at the option of the member.

G. Advertising

1. Advertising of credit union services shall be in accordance with policies set forth in DoD Directive 1344.7 [9].

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 [9] and DoD Directive 5120.431) is prohibited with the exception of insert advertising in the *Stars and Strips* overseas.

3. The use of the Armed Forces Radio and Television Service (DoD Instruction 5120.20 [9]) to promote a specific credit union is prohibited.

4. Onbase credit unions may use the unofficial section of the installation daily bulletins, provided space is available, to inform DoD personnel of services afforded members and announce membership meetings, seminars, consumer information programs and other matters of broad general interest.

5. Defense credit unions may use onbase information bulletin boards for announcements of membership meetings and promotional materials of a broad general nature that complement the installation's financial counseling and thrifts promotion programs. Onbase credit unions may use installation message center services to distribute reasonable numbers of announcements to units for display on informational bulletin boards, provided such does not impose an unreasonable workload on the distribution system.

6. Competitive literature from other credit unions may not be disseminated through installation activities, to include military exchange outlets, at locations served by onbase credit unions. This does not preclude a credit union from using a direct mail approach to serve its field of membership or commercial advertising in the area of another credit union.

H. Overseas Operations

1. An overseas credit union branch or facility shall be limited to onbase operations. It shall confine its field of membership to individuals or organizations who are eligible by law or regulation to receive services and benefits from the installation and who are not precluded from receiving these services by inter-governmental agreement or host country law.

2. Credit unions serving overseas shall have a prescribed territorial franchise. However, any credit union may continue to serve its members stationed overseas by direct mail.

3. Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host country law.

4. Credit unions may purchase foreign currency from the servicing military banking facility (MBF) at the bulk rate when used for internal vendor or payroll payments. If accommodation exchange service is provided to members, foreign currency may be purchased from the MBF at the accommodation rate. Sales to individuals must be at a rate of exchange that is no more favorable than that available from the MBF in accordance with DoD Directive 7360.11[10]

5. When military payment certificates are prescribed for the area in which the overseas credit union is operating, they shall be used in accordance with DoD Instruction 7360.5[10] and implementing command regulations.

6. In accordance with NCUA rules and regulations, no credit union loans may be made for the purpose of purchasing real property or purchasing or erecting any type of residence in any country outside the U.S., its territories and possessions, or the Commonwealth of Puerto Rico.

7. The recommendations and direction of the NCUA through its rules, regulations, procedural forms, reports and manuals shall directly apply to all Defense credit union branches and facilities operating overseas.

8. Funds shall be deposited and invested in accordance with the authority applicable to federal credit unions. Overseas Defense credit union branches and facilities shall deposit funds in accordance with instructions issued by the NCUA, giving full consideration to use of the servicing MBFs.

9. Operation of overseas Defense credit union branches and facilities shall be reviewed by the NCUA during examination of the parent credit union or as the NCUA determines necessary.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1985.

[FR Doc. 85-21478 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

[8] See footnote 1 to §231a.1

[9] See footnote 1 to § 231a.1.

[10] See footnote 1 to § 231a.1.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85-17]

Marine Event; Lake Havasu Classic

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule will establish special local regulations during

the Lake Havasu Classic. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Havasu Sports Federation, "Lake Havasu Classic" will be conducted between 8:00 am and 5:30 pm on November 27, thru December 1, 1985, on the Colorado River east of Spectator Point in Thompson Bay, Lake Havasu. This event will have approximately 50 tunnel and pleasure/modified V-bottom outboards 16 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11-85-17 Lake Havasu Classic, Lake Havasu City, Arizona

(a) Regulated Area: The following area will be closed intermittently to all vessel traffic: that portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130°T off Spectator Point, thence due north approximately 2200 yards, thence due west approximately 2400 yards, and thence back to the starting point.

(b) Effective Dates: These regulations will be effective from 8:00 AM to 5:30 PM on November 27, thru December 1, 1985.

(c) Special Local Regulations: All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "offical regatta patrol" consists of any Coast Gaurd, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failue to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM."

Dated: August 15, 1985

A.B. Beran,

Commmodore, United States Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85-21454 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-16]

Marine Event; Annual Parker Thanksgiving Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the Annual Parker Thanksgiving Regatta. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office,

400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–16) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Southern California Speedboat Club, "Annual Parker Thanksgiving Regatta" will be conducted between 6:00 am and 5:30 pm on 29 November thru 1 December 1985 adjacent to La Paz County Park. This event will have approximately 60 boats 13 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LINE ON NAVIGABLE WATER

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11-85-16 Annual Parker Thanksgiving Regatta, Parker, Arizona.

(a) Regulated Area: The following area will be closed intermittently to all vessel traffic: That portion of the Colorado River in front of La Paz County Park, Parker, Arizona.

(b) Effective Dates: These regulations will be effective from 6:00 AM to 5:30 PM on 29 November thru 1 December 1985.

(c) Special Local Regulations: All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

Dated: August 15, 1985.

A.B. Beran,

Commodore, United States Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–21452 Filed 9–6–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7–85–41]

Drawbridge Operation Regulations; Orange River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation the Coast Guard is considering a change to the regulations governing the State Road 80 drawbridge between Fort Myers Shores and Tice to provide that the draw need not open. This proposal is being made because of a steady decrease in requests for opening the draw. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 24, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Intersted persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The existing regulation provides that the draw shall open on signal if at least 24 hours advance notice is given. The proposed regulation would provide that the draw need not be opened for passage of vessels. Over the past 20 months the draw required to open only once. In the closed position the draw provides a vertical clearance of 11.5 feet at Mean High Water and 13.0 feet at Mean Low Water. A replacement fixed bridge is in the design phase with construction scheduled for fiscal year 1987/1988.

The Orange River is a federal project completed in 1903 with a cleared channel depth of 4 feet to Buckingham. The Corps of Engineers advises that spot shoaling exists in the waterway and that no additional improvements are planned. It is reasonable to assume that navigation upon the waterway will not change in the foreseeable future.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge has only opened once for the passage of a vessel in the past 20 months. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117–DRAW BRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.321 is proposed to be revised to read as follows:

§117.321 Orange River.

The draw of the SR 80 bridge, mile 0.9, between Fort Myers Shores and Tice need not be opened for passage of vessels.

Dated: August 21, 1985.

G.S. Duca,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85–21450 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Temporary Programs of Vocational Training

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to implement certain provisions of Pub. L. 98–543, Veterans' Benefits Improvement Act of 1984. These amendments are necessary to define Adjudication Division responsibilities with respect to newly established temporary vocational rehabilitation training programs. The effect of these amendments will be to provide authority for actions to insure participation in temporary vocational rehabilitation training programs.

DATES: Comments must be received on or before September 30, 1985. The amendments to §§ 3.341 through 3.343 are proposed to be effective February 1, 1985, as provided by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to the Administrator of Veteran Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389–3005.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement Act of 1984 provides for the establishment of two temporary programs of vocational rehabilitation training and the removal of certain financial disincentives to help disabled veterans re-enter the work force. The law provides that participation in a therapeutic or rehabilitation program under 38 U.S.C. 618 (commonly called compensated work therapy) shall not be considered evidence of employability (the ability to maintain a substantially gainful occupation for either compensation or pension purposes. In addition, veterans with total disability compensation ratings based on individual unemployability who begin to engage in a substantially gainful occupation during the period from February 1, 1985, through January 31, 1989, may not have their ratings reduced on the basis of regained employability unless they maintain such occupations for a period of 12 consecutive months. We propose to implement these provisions by appropriately amending §§ 3.342 and 3.343.

A temporary program of vocational rehabilitation is being established for veterans who are newly rated totally disabled based on individual unemployability. The program period begins on February 1, 1985, and ends on January 31, 1989. Veterans so rated during the program period will be required to participate in an evaluation to determine whether the achievement of a vocational goal is reasonably feasible. Failure to participate in such an evaluation, for reasons other than those beyond the veteran's control, will result in reduction of the veteran's disability rating to the evaluation that would be applicable without consideration of individual unemployability. The rating will remain so reduced for the duration of such failure. In addition, should the veteran fail to pursue (or fail to continue to pursue) the rehabilitation program developed for the veteran, the rating board, in a promptly scheduled review of the veterans rating shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veterans eligibility for a total disability rating based on individual unemployability and shall adjust the veterans rating as necessary.

A temporary program of vocational training is also being established for veterans awarded disability pension during the above program period. Veterans under age 50 at the time pension is awarded will be required to participate in an evaluation to determine whether the achievement of a vocational goal is reasonably feasible. If

such a veteran fails, for reasons other than those beyond the veteran's control, to participate in the evaluation process, the veteran's pension award will be suspended for the duration of such failure. The program is also available to veterans who are age 50 or older at the time pension is awarded, but participation is strictly voluntary and there is no provision for suspending awards for failure to participate in the evaluation process.

The VA is proposing amendments to §§ 3.341 and 3.342 to implement the award reduction and suspension provisions related to these two new programs. Additional rules implementing these temporary programs will be separately proposed as amendments to 38 CFR Part 21.

The Administrator hereby certifies that these proposed regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

Approved: August 5, 1985.

By direction of the Administration.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, *Adjudication*, is amended as follows:

1. Section 3.341 is amended by adding paragraph (c) to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

* * * * *

(c) *Temporary program of vocational rehabilitation.* (1) Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6513, to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evaluation process, the veteran's rating shall be reduced, in accordance with § 3.105(e), to the rating applicable to the veteran's service-connected disabilities without consideration of individual unemployability and shall remain so reduced for the duration of such failure.

(2) Veterans described in paragraph (c)(1) of this section from whom it is determined that the achievement of a vocational goal is reasonably feasible and for whom an individualized written plan of vocational rehabilitation is formulated will be required to pursue the program described in that plan. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to pursue (or to continue to pursue) such vocational rehabilitation program in accordance with § 21.6517, the rating board, in a promptly scheduled review of the veterans rating, shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veteran's eligibility for a total disability rating based on individual unemployability and shall adjust the veterans rating as necessary.

(38 U.S.C. 363)

2. In § 3.342, paragraph (b)(4) is revised and paragraph (c) is added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(b) * * *

(4) The following shall not be considered as evidence of employability:

(i) Employment as a member-employee or similar employment obtained only in competition with disabled persons.

(ii) Participation in, or the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618. (But see §§ 3.262 and 3.271 with regard to income for pension purposes.)

(38 U.S.C. 618(f))

* * * * *

(c) *Temporary program of vocational rehabilitation training for certain pension recipients.* (1) When a veteran under age 50 is awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6050, to determine that veteran's potential for rehabilitation. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that a veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evalution process, the veteran's disability pension award shall be suspended effective the date of last payment and shall remain suspended for the duration of such failure.

(2) Veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, are also eligible to apply for participation in vocational rehabilitation training; however, such participation is strictly voluntary, and the provisions of paragraph(c) (1) of this section do not apply to such veterans.

(38 U.S.C. 524)

3. In § 3.343, paragraph (c) is revised to read as follows:

§ 3.343 Continuance of total disability ratings.

* * * * *

(c) *Individual unemployability.* (1) In reducing a rating of 100 pecent service-connected disability based on individual unemployability, the provisions of § 3.105(e) are for application but caution must be exercised in such a determination that actual employability is established by clear and convincing evidence. When in such a case the veteran is undergoing vocational rehabilitation, education or training, the rating will not be reduced by reason thereof unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic

rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him or her, or unless the physical or mental demands of the course are obviously incompatible with total disability. Neither participation in, nor the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618 shall be considered evidence of employability. (38 U.S.C. 618(f))

(2) If a veteran with a total disability rating for compensation purposes based on individual unemployability begins to engage in a substantially gainful occupation during the period beginning on February 1, 1985, and ending on January 31, 1989, the veteran's rating may not be reduced solely on the basis of having secured and followed such substantially gainful occupation unless the veteran maintains the occupation for a period of 12 consecutive months. For purposes of this subparagraph, tempoary interruptions in employment which are of short duration shall not be considered breaks in otherwise continuous employment. (38 U.S.C. 363(a))

* * * * *

[FR Doc. 85-21388 Filed 9-6-85; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2892-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a revision to the Ohio State Implementation Plan (SIP) for Ozone. This revision is an alternative emission reduction plan (bubble) with an extended compliance schedule for eight flexographic printing lines for Champion International Corporation's DairyPak Division in Olmstead Falls, Ohio. The revision also permits compliance to be determined on a monthly basis.

USEPA is proposing to disapprove this revision for the following reasons: (1) The revision request does not contain adequate support that the compliance date extension to December 1987 is expeditious. (2) The source is located in an area (Cuyahoga County) which lacks both an approved 1982 Ozone SIP and an approved attainment demonstration. Under USEPA's SIP revision policy, sources which are located in areas which lack an approved SIP cannot be considered for longer averaging periods until an approvable attainment demonstration is provided showing timely attainment and maintenance of the ozone standard, and with the requirement that areas demonstrate "reasonable further progress" (RFP) toward the goal of attainment. (3) The revision request also lacks adequate support for the monthly averaging compliance method specified in the revision request. As a result of this proposal to disapprove the revision for DairyPak, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-21-09(Y) and Rule 3745-21-04(C)(32).

DATE: Comments on this revision and on the proposed USEPA action must be received by October 9, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois, 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On August 29, 1983, the Ohio Environmental Protection Agency (Ohio EPA) submitted a SIP revision request for Champion International Corporation's DairyPak Division, which is located in Cuyahoga County. On September 1, 1983, USEPA returned to Ohio EPA as incomplete a number of draft and final SIP revision requests (including the DairyPak revision) for sources which are located in urban nonattainment areas lacking current attainment demonstrations. Because these were request to change applicable SIP requirements in areas lacking current attainment demonstrations, the requests were considered incomplete. The DairyPak revision request was included among those returned to the State.

In a letter dated February 28, 1985, USEPA requested that Ohio EPA notify the Region V office of its preferred disposition of each submittal within two weeks. If the Ohio EPA elected to withdraw the revisions, USEPA stated it would take no further action on them. If, on the otherhand, the State did not withdraw them, USEPA stated that it would have to propose to disapprove them because they were requests to change applicable SIP requirements in areas lacking current attainment demonstrations. On April 4, 1985, the State notified USEPA that it still considered each of these SIP revision requests pending, and requested USEPA to approve them.

Based on its review of the SIP revision request for Champion International Corporation's DairyPak Division, USEPA is today proposing to disapprove this revision as a result of several deficiences. Each of the deficiencies is discussed in detail below. The remaining SIP revision requests which were the subject of the September 1, 1983 and February 28, 1985, letters will be discussed in future **Federal Register** notices.

Summary of SIP Revision

Champion International Corporation, Dairy-Pak Division operates eight flexographic printing lines in Omstead Falls (Cuyahoga Country). The lines are used for the printing of polyethylene coated paper milk cartons. Because DairyPak has chosen to pursue a waterborne ink conversion program, it is subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-21-09(Y)(1)(a)(ii)[1] which requires that the VOC content of each coating and ink employed in the printing lines not exceed 25 percent by volume of the volatile content. In addition, DairyPak is also subject to the December 31, 1982, compliance date contained in OAC Rule 3745-21-04(C)(32). In lieu of the requirements mentioned above, Ohio EPA has submitted a bubble and an extended compliance date to December 31, 1987, for DairyPak.

DairyPak has primarily employed solvent-based coatings and inks in the

[1] If the source had chosen a low-solvent conversion program, it would be subject to 3745-21-09(Y)(1)(a)(i). If the source complied by the use of add-on control equipment, it would be subject to OAC Rule 3745-21-09(Y)(1)(b).

printing lines. During 1981, the baseyear, the VOC emissions from these sources were approximately 261 tons, or 2.96 pounds of VOC per pound of coating and ink solids delivered to the lines. Under the proposed bubble, DairyPak will convert to waterborne coatings and inks in order to obtain an emission reduction of 196 tons/year from the facility. This overall reduction in 1981 base year emisisons will result in a VOC emission rate of 0.74 pounds of VOC per pound of coating and ink solids. This limit is generally equivalent to the 75 percent overall reduction requirement that would be achieved if DairyPak were to strictly comply with the requirements in OAC Rule 3745–21–09(Y)(1)(a)(ii). Under this bubble, some of the printing lines would be able to emit above the 0.74 limitation, and others would be below it. The variance would permit compliance with this limit to be determined on a monthly basis.

To ensure reasonable progress in achieving the alternative emission limitation, minimum reductions in the monthly average FOC content of all coatings and inks has been specified in the variances. In addition, the variances contain recordkeeping and reporting requirements.

If compliance with the alternative limitation of 0.74 pounds of VOC per pound of coating and ink solids cannot be achieved solely through the use of waterborne coatings and inks the variance requires the installation of add-on control equipment, as necessary to achieve compliance with the requirements of OAC Rule 3745–21–09(Y)(1)(b) by December 31, 1987.

SIP Deficiencies

USEPA is proposing to disapprove this revision, because of several deficiencies with the SIP revision request for DairyPak. Each of the deficiencies is discussed below.

1. Compliance-Date-Extension

Ohio EPA has requested a compliance date extension to December 31, 1987, for Dairy-Pak. Section 172(a)(2) of the Clean Air Act (CAA) requires that areas with extensions until December 31, 1987, for final attainment of the national ambient air quality standard (NAAQS) for ozone (such as Cuyahoga County) must, nevertheless, demonstrate that they are attaining the standard "as expeditiously as practicable". Therefore, for each individual compliance date extension request, USEPA must determine whether or not the request does, in fact, evidence an expeditious time frame. USEPA's technical criteria for evaluating compliance date extensions for VOC sources are set forth in an April 16, 1984, letter from Steve Rothblatt, Chief Air and Radiation Branch, to the Region V State Air Directors and an August 17, 1984, letter from Joseph Cannon, Assistant Administrator for Air and Radiation, to Richard Lillquist, President of the Flexible Packaging Association. In order to demonstrate that a compliance date extension represents an expeditious timeframe; the source must provide evidence of having made reasonable efforts to develop and/or install low-solvent technolgoy at its facility from the adoption of the applicable regulations without any significant periods of inaction. The April 16, 1984 and August 17, 1984, letters are included in the docket of this rulemaking action and are available at the Region V office.

Ohio EPA's RACT II regulations were adopted by the State of February 12, 1981 (see 47 FR 28097, June 29, 1982). Although Dairy-Pak has identified some problems that it encountered in converting to low-solvent inks, it has not adequately described the steps it took to investigate the possibility of successfully using complying inks. Without this detailed explanation, it is not possible to substantiate DairyPak's claim that an extension to the end of 1987 is appropriate.

Adequate substantiation should include copies of correspondence between DairyPak and its ink suppliers, as well as a description and analysis of any tests that it performed with low-solvent inks. It should also include a showing that it has contacted those suppliers that could reasonably be expected to supply inks to DairyPak, and that significant problems exist which require an extended compliance schedule of about seven years.

In addition, the submission includes very limited information regarding the number and type of inks tried or the results of any trial runs. Therefore, insufficient information has been provided to determine whether the DairyPak SIP variance meets the requirements of the CAA that the SIP represents as expeditious as practicable attainment of the ozone NAAQS. Based on the information provided to USEPA thus far, the SIP request cannot be approved.

Nor can USEPA approve a relaxation (compliance date extension) in an area that lacks approvable attainment demonstration because without such a demonstration it is impossible for USEPA to determine whether or not the requested SIP variance will interfere with attainment and maintenance of the ozone NAAQS and with the requirement that nonattainment areas demonstrate "reasonable further progress" toward the goal of attainment prior to the final attainment date. USEPA's policy is set forth in a July 29, 1983, memorandum from Sheldon Meyers, former Director of the Office of Air Quality Planning and Standards to the Regional Offices. As discussed further below, on July 25, 1984 (49 FR 29973), USEPA proposed to disapprove the Ohio 1982 ozone SIP for the Cleveland ozone nonattainment area, which includes Cuyahoga County, based on measured violations of the ozone NAAQS in 1983. Therefore, because the State of Ohio does not yet have an approved attainment demonstration, USEPA cannot approve the compliance date extension and relaxation for DairyPak.

2. Monthly Averaging in Areas Lacking an Approved SIP

Ohio SIP Rule 3745–21–09(B) requires compliance to be determined on a daily basis. The DairyPak revision, however, would permit compliance determinations on a monthly basis.

Generally, Agency guidance specifies the use of daily averaging for State VOC regulations (as adopted by Ohio) as the preferred alternative where continuous compliance with current RACT requirements is not feasible. In USEPA's view, the use of daily averaging for VOC sources is generally necessary to assure timely attainment and maintenance of the ozone NAAQS, to be consistent with the short-term ozone standard, and to prevent circumvention of the installation of overall RACT level controls. Under certain specific circumstances, however, USEPA will allow longer averaging periods of up to 30 days. USEPA's current policy concerning averaging times for VOC sources is set forth in a January 20, 1984, memorandum entitled "Averaging Times for Compliance with VOC Emissions Limits." Among other things, the memorandum states that sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations cannot be considered for longer averaging periods than 24-hours until the SIP has been revised to demonstrate attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone. In addition, the State must demonstrate that RFP will be maintained in the area with respect to maximum daily emissions even if the source is allowed to switch to long-term averaging.

In the absence of these demonstrations, it is impossible for USEPA to determine whether or not the requested SIP variance will interfere with attainment or maintenance of the

ozone NAAQS, or with the requirement that nonattainment areas such as Cuyahoga County demonstrate reasonable further progress toward the goal of attainment.

The DairyPak revision consists of a bubble with monthly averaging. USEPA cannot approve this revision because based on 1983 data showing measured violations of the ozone NAAQS in the Cleveland ozone nonattainment area including Cuyahoga County, USEPA proposed to disapprove: (A) the demonstration from Ohio that the SIP provides for attainment by the end of 1982, an (B) its request for recission of the current extension of the attainment date to 1987 [2]. Until Ohio's ozone SIP for Cleveland is approved as meeting Part D requirements or unless Ohio submits an approvable attainment demonstration, USEPA cannot approve a site-specific SIP revision that provides a longer than daily averaging time for determining compliance.

3. Inadequate Documentation to Support a Monthly Averaging Compliance Method

Another deficiency with this SIP revision request relates to the monthly averaging period specified in the variance. According to the Agency's January 20, 1984, SIP revision policy mentioned earlier, a demonstration also must be made that either the source operations are such that daily VOC emissions cannot be determined or the application of RACT is not economically or technically feasible on a daily basis.

The revision request cites the short length of product run and the large number of colors as the major factors that make daily recordkeeping for inks infeasible. The submittal also states that inks are brought to the press at the beginning of each production shift in five-gallon containers and completion of an order may use only a portion of the ink in each container. The unused inks are then returned to the ink room. In order to measure the actual ink usage, DairyPak states that each container would have to be weighed and the weight recorded each time a container was removed from, or returned to, the ink room. DairyPak also states that a data processing system would be required, as well as additional personnel, in order to properly comply with daily recordkeeping requirements.

The revision further states that the major factor making daily recordkeeping of solvents used infeasible is DairyPak's method of storing and dispensing of solvents. The solvents used in this plant are purchased in bulk, and stored in underground tanks located outside the building. They are pumped into the ink storage room and dispensed to the machines via three-gallon and five-gallon containers. DairyPak claims that this activity would be difficult to control.

Although this revision request demonstrates that it will be less convenient and possibly more expensive for DairyPak to keep daily records, it does not demonstrate that keeping daily ink and solvent records is infeasible.

Longer-term averaging can also be justified by a demonstration that the application of RACT for each emission point is not economically or technically feasible on a daily basis. However, DairyPak has not provided sufficient information demonstrating that, upon completion of its conversion program, it will be infeasible to convert a sufficient number of solvent based inks and coatings to allow DairyPak to comply on a daily basis. For these reasons, it is USEPA's view that DairyPak has not adequately demonstrated that it should be allowed to determine compliance with VOC emission limits on a monthly basis.

Conclusion

USEPA is proposing to disapprove the SIP revision request for Champion International Corporation's DairyPak Division in Cuyahoga County, Ohio for the following reasons:

1. The source has not demonstrated that the requested compliance date extension to the end of 1987 constitutes an expeditious schedule as required by the CAA.

2. The source is located in an area (Cuyahoga County) that lacks an approved 1982 ozone SIP and an approved attainment demonstration. Under USEPA's SIP revision policy and the CAA, sources that are located in areas lacking an approved SIP cannot be considered for longer averaging periods until an approvable attainment demonstration is provided in order to evaluate whether granting a relaxation will interfere with attainment of the ozone standard or interfere with the requirement of RFP toward attainment.

3. The source has failed to demonstrate that it cannot determine VOC emissions on a daily basis and that the application of RACT at that facility is economically or technically infeasible on a daily basis.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

(42 U.S.C. 7401–7642)

Dated: April 24, 1985.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 85-21283 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[2] USEPA determined that the 1983 exceedances were not attributed to source noncompliance with the existing SIP. This is discussed in detail in the July 25, 1984 **Federal Register** notice (49 FR 29673).

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40 CFR Part 52

[A-9-FRL-2893-6]

Approval and Promulgation of Implementation Plans; Nevada Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Nevada post 1982 State Implementation Plan (SIP) revisions for the Las Vegas Valley ozone (O_3) nonattainment area. These revisions have been evaluated against the requirements of the Clean Air Act and EPA policy for areas with federally approved 1979 SIPs that did not attain the National Ambient Air Quality Standards (NAAQS) by December, 1982 and thus were required to revise their SIPs. EPA has found that the proposed SIP revision for Las Vegas Valley successfully meets these requirements, except for minor deficiencies concerning projected emission inventories.

DATE: Comments must be submitted to EPA by October 24, 1985.

ADDRESS: Send comments to: Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Liaison Section (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the SIP revision and EPA's evaluation may be inspected during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, A-2-2 (Address noted above), (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

Introduction

The review of the proposed SIP revision for the Las Vegas Valley is based on EPA's final rule for

"Compliance with the Statutory Provisions of Part D of the Clean Air Act" and the "Policy for Correction of Part D SIPs for Nonattainment Areas", published on November 2, 1983 (48 FR 50686). Additional criteria for plan review is part of the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas" dated January 27, 1984.

Background

The Clean Air Act (CAA) Amendments of 1977 required states to revise their SIPs by January 1979 for all areas that had not attained the NAAQS. These "1979 SIP revisions" were to provide for attainment of the NAAQS by December 31, 1982.

EPA took final action to conditionally approve the 1979 SIP revisions for Las Vegas Valley on April 14, 1981 (46 FR 21758). On April 13, 1982 (47 FR 15790) EPA revoked the conditions because they had been fulfilled by the State. However, it was determined at a later date that the Las Vegas Valley would not attain the O_3 NAAQS by December, 1982 and, on February 3, 1983 (48 FR 49721), EPA proposed to find the SIP inadequate and to impose a major source construction ban under section 110(a)(2)(I) of the CAA. In the November 2, 1983 rulemaking action, EPA ruled that the section 110(a)(2)(I) construction ban did not automatically apply in nonattainment, nonextension areas that failed to attain by December 31, 1982; the Agency set forth a policy for correcting the problems identified in the February 3, 1983 proposed rulemaking.

On February 24, 1984, EPA notified the Governor of Nevada that the SIP for Clark County did not adquately provide for attainment of the O_3 standard and called for a revised SIP that would cure this inadequacy. EPA Region 9 provided further explanation for the SIP call and specific guidance on what portion of the SIP needed revision in letters, dated 16 March 1984, to the State and lead planning agency. To meet these EPA requirements, the Governor of Nevada submitted the post 1982 Ozone Update of the Las Vegas Valley Air Quality Implementation Plan on January 11, 1985.

Plan Evaluation

This evaluation is divided into two parts. The first part provides a summary of the federal requirements for correcting Part D plans for areas which did not demonstrate attainment of the NAAQS by December 1982. The second part evaluates the Las Vegas Plan Update in light of these requirements. The detailed evaluation is based on a more comprehensive review contained in EPA's Technical Support Document (TSD) which is available at the EPA Region 9 address listed above.

A. General Summary

All SIP revisions called for under section 110(a)(2)(H) must be prepared in accordance with the requirements of Section 110 and Part D of the Act and the General Preamble for developing 1979 SIPs, dated April 4, 1979 (44 FR 20372).[1] The November 2, 1983 policy and the January 27, 1984 Guidance Document supplement these original plan requirements. Post-1982 areas are required to attain the NAAQS as expeditiously as practicable; EPA presumes that such areas should be able to attain generally no later than December 31, 1987. The plan must provide for the implementation of all reasonably available control measures and for additional measures needed to attain the NAAQS as expeditiously as practicable and to assure reasonable further progress in the interim. The SIP must contain an emission offset program and/or an increment for growth which meets the requirements of section 173(1) and the General Preamble.

The three most recent areas of air quality must be included in the plan. Emission inventories must be prepared for a base year not more than two years prior to the year of the SIP submittal and projected to the attainment year and sufficiently beyond to assure maintenance of the standard. Air quality models used should be among those listed in the EPA modeling guidelines or specifically approved by EPA. Other general plan requirements are to ensure: (1) Conformity of all federal actions with the SIP, (2) coordination of all affected jurisdictions in the development and implementation of the SIP, (3) provisions for a contingency plan and (4) enforcement of the existing SIP.

Additionally, those areas which failed to meet the ozone and/or the carbon monoxide standards by 1982 were required to either submit SIP revisions that also met the requirements of the January 22, 1981 policy (46 FR 7182) or provide justification to EPA for not meeting any such requirement. The policy called for the application of Reasonably Available Control Technology for all sources covered by an EPA published Control Techniques Guidance document, a fully adopted, enforceable vehicle inspection and maintenance program and all reasonably available control measures for the transportation sector. Air quality data for O_3 modeling should be sufficient to meet the Level III modeling requirements as specified in Appendix D of the January 22, 1981 policy statement.

B. Detailed Plan Evaluation

Las Vegas Valley

The control strategy for attaining and maintaining the O_3 standard is based on an EKMA/OZIPP modeling analysis which was modified to incorporate chlorine reactions. Clark County had determined that chlorine played a key role in the formation of O_3 in the southeast portion of the Las Vegas Valley. The allowable emission level for chlorine was calculated to be 70 lbs/hr. Adopted regulations controlling chlorine are projected to limit emissions to 7 lbs/hr. by 1988. 1984 emissions were 25–30 lbs/hr. Reductions in nitrogen oxides and hydrocarbons will result from control measures including an inspection/maintenance (I/M) program previously approved as part of the Nevada SIP. However, the attainment demonstration does not project specific emissions of nitrogen oxides and hydrocarbons beyond 1987, or for chlorine beyond 1988.

The chlorine regulations were adopted by the County in May, 1984; EPA finds them legally enforceable. The plan contains the necessary commitments from the state and local agencies to implement the plan and the schedule is considered to be as expeditious as practicable. The plan shows that the O_3 standard is currently being achieved in the Las Vegas Valley and that the new regulations provide an enforceable mechanism that will ensure continued attainment. The plan also contains a demonstration that the adoption of regulations for sources covered by the CTGs issued by EPA will not lead to more expeditious attainment. Such controls are also not needed for maintenance. An I/M program is being implemented in Clark County and was previously approved by EPA.

Therefore, the plan satisfies the requirements for a demonstration that the standard will be attained by December 31, 1987, and the adoption of all necessary measures. To address the reasonable further progress requirements, the state has demonstrated that sufficient reductions have occurred to provide for attainment of the O_3 standard. In addition, the plan satisfies the following requirements: (1) Adequate evidence of public and governmental involvement; (2) A contingency provision which describes

[1] EPA published four additional notices supplementing the General Preamble: July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

the process for correcting a failure to meet reasonable further progress; (3) Procedures to ensure conformance with the SIP for transportation plans, programs, and projects which are approved by the metropolitan planning organization; (4) A commitment to developing, expanding or improving public transportation to meet basic transportation needs and (5) Enforcement of the existing SIP.

Proposed Actions. Based on the above evaluation, EPA is proposing to approve fully the post 1982 Nevada SIP Update for the Las Vegas Valley portion of Clark County if the State submits projected emission inventories beyond 1987 prior to EPA's final rulemaking. The Plan Update satisfactorily meets all other CAA Part D requirements and subsequent regulations and policy for nonattainment areas.

Interested parties are invited to comment on all aspects of these proposed actions. Comments should be submitted to the EPA Region 9 office.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: (42 U.S.C. 7401–7642).

Dated: June 27, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85–21492 Filed 9–6–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A–3–FRL–2893–8]

Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Graphic Packaging Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order isued by the Pennsylvania Department of Environmental Resources to Graphic Packaging Corporation. The Order requires the company to bring air emissions from its rotogravure and flexographic printing facility located in Tredyfferin Township, Chester County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Compliance shall be achieved by December 31, 1986 utilizing low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 9, 1985.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal businss hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: Graphic Packaging Corporation operates a rotogravure and flexographic printing facility in Tredyfferin Township, Chester County, Pennsylvania. The Order under consideration addresses emissions from the printing processes, which are subject to § 129.67, of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and are part of the federally-approved Pennsylvania State Implementation Plan for the control of ozone. The Order requires final compliance with the regulation by December 31, 1986 through the use of low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the printing facility is a major source of VOC emissions. The facility is located in the Metropolitan Philadelphia Interstate Air Quality Control Region, and non-attainment area for the National Ambient Air Quality Standard for ozone. The facility as presently constructed is unable to comply with regulations limiting emissions of VOCs codified at section 129.67 of Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance by December 31, 1986 utilizing LST and April 21, 1987 should LST be abandoned and add-on controls installed. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for public hearing were received by the State. The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7) of the Clean Air Act. The first increment of progress, which requires installation of dryers on two selected printing stations by January 31, 1985, has been completed. The 1983 estimated VOC emissions of 670 Tons/Year (T/Y) will be reduced by 75 percent to 167 T/Y by December 1986 if low solvent coatings are chosen, but in any event no later than April 21, 1987.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides substantial emissions reduction in a manner which permits the company to

move toward the use of either low solvent coatings or facility alterations to install add-on controls.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). As required by section 113(d)(1)(E) of the Act, the Order notifies Graphic Packaging Corporation of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Authority: 42 U.S.C. 7413, 7601.

Dated: August 28, 1985.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 85-21440 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 439

[OW-FRL-2893-9]

Pharmaceutical Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: In the preamble to the final regulations for the pharmaceutical manufacturing point source category (see 48 FR 49808, October 27, 1983), the Agency stated that it was not establishing regulations controlling the discharge of volatile priority pollutants form pharmaceutical plants. However, the Agency has received new information concerning the possible harmful effects of discharges containing methylene chloride and has begun reconsideration of its policy on regulating other volatile priority pollutants. If the Agency reaches new conclusions on discharges containing methylene chloride and other volatile priority pollutants, this may warrant reconsideration of the decision not to promulgate regulations controlling the discharge of methylene chloride and other volatile priority pollutants from pharmaceutical plants. Accordingly, EPA is reviewing and updating data for technologies capable of removing methylene chloride and other volatile organics from wastewater. Steam stripping technology will remove volatile organics from wastewater and, at the same time, minimize exposure of workers and the general public to these chemicals. The purposes of this notice are (a) to summarize previously available data and to make available new information on the ability of steam stripping technology to reduce discharges of waterborne volatile priority pollutants from pharmaceutical manufacturing plants and the cost estimates associated with this technology, (b) to request comments on the available information, and (c) to seek additional information concerning steam stripping technology. As part of an integrated regulatory investigation of methylene chloride, the Agency will consider control options applicable under the several statutes administered by EPA. One of the controls that may be proposed would be regulations controlling the discharge of methylene chloride and other volatile pollutants if such regulations are warranted based on all of the available information.

DATE: Comments must be submitted on or before November 8, 1985.

ADDRESSES: Comments should be submitted in triplicate to Dr. Frank H. Hund, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The information described in this notice will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear), Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. EPA regulations provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Frank H. Hund at (202) 382-7182 for information regarding the technical data.

SUPPLEMENTARY INFORMATION:

I. Reason for this Notice.
II. Summary of Previously Available Information.
III. Summary of Information Being Made Available.
IV. Solicitation of Comments.

I. Reason for This Notice

As a result of new information concerning methylene chloride and new data concerning air emissions of methylene chloride and other toxic volatile substances, the Agency is reevaluating its position with regard to toxic volatile regulations for the pharmaceutical manufacturing point source category. New information indicates that methylene chloride causes cancer in animals and that the effects of methylene chloride discharges from pharmaceutical manufacturing plants may be more harmful than was previously believed. The Agency is also concerned about air emissions of methylene chloride and other toxic volatile pollutants from publicly owned treatment works (POTWs) which are a direct result of waterborne discharges from pharmaceutical plants as well as air emissions from the biological treatment systems operated by pharmaceutical manufacturing plants. Air emissions of volatile priority pollutants from the treatment works operated by organic chemical and pesticide manufacturing plants and from the POTWs to which some of them discharge have also been a source of concern. In a recent notice (July 17, 1985), the Agency presented a discussion of toxic volatile emissions from the biological treatment systems of organic chemical manufacturing plants at 50 FR 29068. As discussed in this notice, the Agency believes that while the biological treatment systems remove large amounts of volatile organic pollutants, much of this removal is accomplished through transfer of the pollutants to the air via air stripping. This statement also applies to pharmaceutical and pesticide manufacturing plants who also have significant amounts of toxic and other volatile organics present in their raw wastewater and who also employ biological treatment. The Agency is also concerned that high concentrations of toxic volatile organics within the sewer systems of POTWs which are a direct result of waterborne discharges may endanger workers in these systems and may create conditions leading to explosions and/or fires.

The Agency believes that both the concentrations of toxic volatile organics

in the discharges from pharmaceutical plants and the air emissions from treatment works can be significantly reduced by effective in-plant source control. Steam stripping technology, employed on an in-plant basis, will remove toxic volatiles from wastewater while at the same time minimizing the exposure of workers and the general public to these substances.

II. Summary of Previously Available Information

In the preamble to its November 26, 1982 proposal concerning the pharmaceutical manufacturing point source category, the Agency estimated that a level of 1.2 mg/l for TTVO (total toxic volatile organics) may be achievable by steam stripping technology and specifically requested comments on this estimate. Following the proposal, the Agency received a number of comments from the industry and other sources concerning this estimate as well as comments questioning the need for toxic volatile regulations in general. (For a complete listing of all comments and responses, see "Summary of Comments and Responses on the November 1982 Proposed Regulations," located in the public record of the September 1983 final regulations (see **ADDRESSES**).

After receipt of these comments, the Agency solicited additional information on the discharge of toxic volatile organic pollutants by sending questionnaires to pharmaceutical manufacturing plants. Additionally, the Agency obtained operating data for two steam strippers at a pharmaceutical manufacturing plant and developed suggested limitations for use by local authorities in the event that they must establish controls on toxic volatile organic discharges. Specifically, the Agency sampled a packed column steam stripper designed to remove methylene chloride and a flash tank (a one theoretical plate steam stripper) which was used to remove toluene from wastewater. The suggested limitations for mthylene chloride, chloroform, benzene fnd toluene derived from these sampling data are presented in Section VIII of "Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category," (EPA 440/1–83/084). Also inlcluded in Section VIII is a discussion of how the data were obtained and the methodology used to develop the suggested limitations.

The statistical approach used to calculate the 30-day maximum average and daily maximum variability factors is discussed in "Statistical Support for Pharmaceutical Rulemaking—September 1983", which is also part of the final regulation record. The design parameters used to estimate plant-by-plant steam stripping costs are presented in Appendix A of the final development document. Actual plant cost estimates developed by using these design parameters and the information from the volatiles questionnaire responses may be found in the public record of the final regulations.

III. Summary of New Information Being Made Available

The technical data used to derive the suggested limitations which are presented in Section VIII of the development document were obtained at a pharmaceutical plant during a sampling study in which both the plant and EPA participated. However, only the data obtained by EPA was presented in the development document supporting the October 27, 1983 final regulations. The plant, in addition to providing comments on EPA's data and methodology, also obtained data from the two steam strippers in question. We are now making available the plant's data, along with the plant's comments concerning EPA's data and our methodology for developing limitations. The Agency is also making available its response to the issues raised by the plant concerning the steam stripping data and the methodology used to develop the suggested limitations. Interested parties are also invited to review the steam stripping data found in the rulemaking records for the organic chemical, plastics, and synthetic fibers and the pesticides categories for comparison purposes.

The Agency is making available the information described in this notice for review and comment by interested parties. After receipt and review of comments and new information provided in response to this notice, the Agency may devleop proposed toxic volatile BAT, PSES, NSPS and PSNS regulations for the pharmaceutical manufacturing point source category which take into account these comments and information along with other data and information.

IV. Solicitation of Comments

The Agency is making available all information and comments received since November 26, 1982 regarding the capability of steam stripping technology to remove toxic volatile pollutants from pharmaceutical manufacturing wastewaters and the estimated costs associated with this technology. EPA invites and encourages public participation in response to this notice of availability. Of particular interest to EPA are information and data relating to the following:

1. Information from individual plants indicating what portion of the process wastewater flow would have to be steam stripped to meet the suggested limitations along with estimates of the associated costs.
2. Comments on the design specifications that are presented in Appendix A of the final development document.
3. Comments on the methodology EPA used to develop the suggested limitations.
4. Comments from pharmaceutical plants which may have to pretreat their waste streams prior to steam stripping. The comments should include information about required pretreatment technology and associated costs.
5. Additional data on the performance of steam stripping technology in the removal of toxic volatile organics from wastewater. These data should include daily volatile organic concentrations influent to and effluent from the steam strippers along with the appropriate design information and data which technically describe the strippers. We also request information on the capital and operating costs of these strippers.
6. Significant changes in the information concerning solvent usage, process flows, employment, and plant wastewater treatment operations reported EPA in 308 questionnaire responses between the years 1978 and 1984.

Dated: August 26, 1985.

Henry L. Longest II,

Acting Assistant Administration for Water.

[FR Doc. 85–21491 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 80–113]

Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Notice of rescheduling of public hearing and further extension of comment period.

SUMMARY: On January 11, 1985 the Coast Guard published in the **Federal Register** a Notice of Proposed Rule Making dealing with requirements for improving

the stability of the inflatable liferafts used aboard merchant vessels and drill rigs of U.S. registry (50 FR 1558). At the time the Coast Guard was not planning to conduct a public hearing. The Coast Guard was not planning to conduct a public hearing. The Coast Guard, on the basis of several written comments, decided a public hearing was desirable. The hearing was scheduled for September 12, 1985 (50 FR 27628). The manufacturers of inflatable liferafts have requested that the public hearing be rescheduled so that results of tests currently being conducted will be available at the hearing. In conjunction with the decision to reschedule the public hearing, the comment period is extended.

DATE: The Coast Guard will hold a public hearing on the above subject on Wednesday, December 11, 1985, 9:30 a.m. to 12:00 noon, Washington, DC. Attendance is open to the public. Persons wishing to present oral testimony at the hearing should notify the Executive Secretary of the Coast Guard Marine Safety Council no later than the day before the hearing. Written comments must be received by January 10, 1986.

ADDRESS: The public hearing will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street SW., Washington, DC 20593. Written comments intended for presentation at the public hearing should be mailed or delivered to the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Captain R. F. Ingraham, Executive Secretary, Marine Safety Council (G-CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, telephone (202) 426-1477.

W.J. Ecker,

Captian U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

September 4, 1985.

[FR Doc. 85-21449 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan and Deductions

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is updating (1) the Thrifty Food Plan which determines the maximum amount of food stamps which participating households receive, (2) the amount of the standard deduction which is available to all households, and (3) the maximum amounts for the excess shelter and dependent care deductions available to certain households. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3427. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Mr. O'Connor.

SUPPLEMENTARY INFORMATION

Publication

State agencies must implement this action on October 1, 1985, and need adequate advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the Thrifty Food Plan and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment, or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o) requires that the October 1, 1985 change in food stamp allotments be based upon the June 1985 cost of the Thrifty Food Plan for a family of four persons consisting of a man and woman ages 20–54 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale, and a requirement to round the final results down to the nearest dollar increments. Section 5(e) requires that the standard deduction and excess shelter and dependent care deductions be adjusted on October 1, 1985 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1985.

Benefits

This action increases maximum food stamp allotments and deductions based on the rising cost of living.

Costs.

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $318 million in Fiscal Year 1986.

Background

Thrifty Food Plan (TFP)

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggest amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups. This update will be based on the TFP outlined in the **Federal Register** Notice published July 29, 1983 (48 FR 34700).

The TFP also constitutes the basis for allotments for food stamp households. As such, the cost of the TFP is the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the TFP for their household size by 30 percent of the household's net income. As prescribed by the statute, these maximum benefit amounts are based on the TFP for a particular four-person household, and adjusted to take into account household size, economies of scale, and rounding.

The cost of the TFP is adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended, provides that the next adjustment will take place on October 1, 1985, based upon June 1985 TFP costs for a family of four persons consisting of a man and woman ages 20–

54 and children 6–8 and 9–11. In June 1985, these TFP values were $268.50 in the 48 States and D.C.; $350.20 in Alaska; $415.60 in Hawaii; $395.80 in Guam; and $345.20 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household in each area were divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. In Alaska, where the TFP is based on Anchorage prices, the urban allotment was computed by adding an additional 6.4 percent to take into account food prices in other urban areas of the States. The rural Alaska allotment was computed by adding 50.7 percent to take into account significantly higher food prices in rural areas. Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and D.C.

The following table shows the new allotments for the 48 States and D.C., urban and rural Alaska, Hawaii, Guam, and the Virgin Islands.

THIRFTY FOOD PLAN AMOUNTS [1]—OCTOBER 1985, AS ADJUSTED

Household size	48 States and District of Columbia	Urban Alaska [2]	Rural Alaska [3]	Hawaii	Guam [4]	Virgin Islands [4]
1	$80	111	158	124	118	103
2	147	204	290	228	217	189
3	211	293	415	327	311	271
4	268	372	527	415	395	345
5	318	442	626	493	470	409
6	382	530	752	592	564	491
7	422	586	831	654	623	543
8	483	670	949	748	712	621
Each additional member	+60	+84	+119	+94	+89	+78

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and rounding.
[2] Increased by 6.4 percent to account for significantly higher food prices in urban cities and towns.
[3] Increased by 50.7 percent to account for significantly higher food prices in rural areas.
[4] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural Alaska.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income. The standard deduction is available to all households. The combined excess shelter expense/dependent care deduction is available to those with extremely high shelter cost and/or dependent care expenses.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households in the 48 States and D.C. shall be allowed a standard deduction of $85. The standard deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $145, $120, $170, and $75, respectively. The law also provides for periodic adjustments in the level of the standard deduction to take into account changes in the CPI–U published by the BLS, for items other than food and the homeownership component of shelter costs. These deductions were last adjusted effective October 1, 1984 (see table). Since the homeownership component was no longer available, BLS had recommended that the Department use "homeowners' costs" and "maintenance and repairs" to achieve a comparable deduction adjustment. this procedure was first used in connection with the deduction adjustments effective October 1, 1984. It was also used for the adjustments which are to take effect October 1, 1985. These additional adjustments reflect changes for the twelve month period ending June 30, 1985. The adjustments are, by law, rounded to the nearest lower dollar. (See table).

Standard deductions	Previous deductions (effective October 1, 1984)	New unrounded numbers (October 1, 1985)	Deductions effective October 1, 1985
48 States and DC	$95	$98.57	$98
Alaska	162	168.14	168
Hawaii	134	139.16	139
Guam	190	197.13	197
Virgin Islands	83	86.97	86

Adjustment of the Shelter Deductions

Sections 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain dependent care and excess shelter expenses. The maximum excess shelter/dependent care deduction specified in the Act for the 48 States and D.C. is $115. The maximum excess shelter/dependent care deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $200, $165, $140, and $85, respectively. The law provides for periodic adjustments in the level of the excess shelter/dependent care deduction to take into account changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of housing costs in the CPI–U published by the BLS. These deductions were adjusted upward effective October 1, 1984 (see table). The next adjustments provided for in the law are to take effect October 1, 1985 to reflect changes for the twelve month period ending June 30, 1985 (also shown in the table). The adjustments are, by law, rounded to the nearest lower dollar. As with the standard deduction, the procedure for the shelter/dependent care deduction substituted the homeowners' and maintenance and repairs components of the CPI–U for the homeownership component.

Shelter deductions	Previous deductions (effective October 1, 1984)	New unrounded numbers (October 1, 1985)	Deductions effective October 1, 1985
48 States and DC	$134	$139.22	$139
Alaska	233	242.11	242
Hawaii	192	199.75	199
Guam	163	169.48	169
Virgin Islands	99	102.90	102

(91 Stat. 958 (7 U.S.C. 2011–2029))

Dated: September 3, 1985.

John W. Bode,

Assistant Secretary.

[FR Doc. 85–21339 Filed 9–6–85; 8:45 am]

BILLING CODE 3410–30–M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 27, 1985, at the Riverfront Hilton, 2 Riverfront Place, Argenta East Room, North Little Rock, Arkansas. The purpose of the meeting is to plan future activity and to elect a vice-chair.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lloyd V. Hackley, or J. richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC., September 3, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21375 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on September 27, 1985, at the Holiday Inn Riverview, 141 Summit Street, Heron Room, Toledo, Ohio. The purpose of the meeting is to plan future projects and to elect committee officers.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel G. Prock, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21376 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 18, 1985, at the Jackson Federal Building, 915 Second Avenue, Room 3080, Seattle, Washington. The purpose of the meeting is to discuss proposed plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Arnold Manseth or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246, (TDD 206/442-4744).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC., September 4, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-21377 Filed 9-6-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Tuesday, September 24, 1985, at 1:00 p.m., Room 6802, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230 (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:00 p.m. Review of import trends, international activities, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982)) and listed in 5 U.S.C. 552b (c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce (202) 377-3031.

For further information or copies of the minutes contact Helen LeGrande (202) 377-4217.

Dated: September 3, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-21382 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

For Duty-Free Entry of Scientific Instrument; University of Arizona

Section 240 of the Trade and Tariff Act of 1984 which pertains solely to the application described below requires the Department of Commerce to determine whether a scientifically equivalent instrument is being manufactured in the United States. We must publish our decision within 90 days after we determine we have a sufficient description of the article to make this finding. We had a sufficient description as of August 28, 1985. We invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Applicant: University of Arizona, Tucson AR 85721. Instrument: Submillimeter Telescope and associated equipment. Manufacturer: Max Planck Institute for Radiostronomy, West Germany. Intended Use: The instrument is intended to be used to investigate deep space objects at previously unattainable wavelengths. Application received by Commissioner of Customs: June 11, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21380 filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Colorado; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85-161. Applicant: University of Colorado, Boulder, CO 80309. Instrument: FR-IR Spectrometer, Model LZMO3. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 50 FR 23171.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an unapodized resolution of 0.01 cm^{-1}. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-21381 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Carbon Band Saw Steel; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to carbon band new steel.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . ."

We have received a short supply request for carbon band saw steel with a width ranging from ¼ inch to 11¾ inches and a thickness ranging from 0.025 inch to 0.035 inch. It will be used in the manufacture of band saws.

Parties interested in commenting on these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information shold clearly so label the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: September 4, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-21442 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Announcment of Workshop for NBS/OSI Workshop for Implementors of OSI

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces six (6) workshop sessions to discuss the continued development of international computer network protocols. The following consititutes the schedule for the workshop through December 1986. The dates are firm.

December 10-12, 1985
February 11-13, 1986
April 29—May 1, 1986
July 22-24, 1986
September 30—October 2, 1986
December 9-11, 1986

(The meetings will be hosted by NBS and will be held at a hotel in the Rockville-Gaithersburg area.)

The workshops will cover protocols in six layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshop. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

To register for the workshops, companies should telephone (301) 921-2601 and send a request on company letterhead to: OSI Workshop Series, Attn: Sharon M. Reeves, National Bureau of Standards, Bldg. 225, Rm B217, Gaithersburg, MD 20899.

The registration request must name the company representatives(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contract Jerry Mulvenna (301) 921-2601.

Dated: September 4, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-21414 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Modification to Letters of Exemption Marine Mammals

On February 14, 1984, Notice was published (49 FR 5645) that a Letter of Exemption to incidentally take small numbers of marine mammals during groundfish gillnet operations was issued to the New England groundfish gillnetters.

On June 20, 1984, Notice was published (49 FR 25271) that a Letter of Exemption to incidentally take small numbers of marine mammals during menhaden purse seine operations was issued to the National Fish Meal and Oil Association.

Notice is hereby given that pursuant to section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and Special Condition 4 of the Letters of Exemption issued to the National Fish Meal and Oil Association and the New England goundfish gillnetters, the Letters are respectively modified as detailed below.

1. Condition 3 of each Letter is deleted and replaced by:

"3. Marine mammals taken as authorized herein may be taken in waters subject to U.S. jurisdiction as described in the application."

The Letters of Exemption as modified are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC.

Dated: September 3, 1985.

Richard B. Roe, Director,

Office of Protected Species, and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 21433 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations on Certain Cotton Textile Products in Category 301 Produced or Manufactured in Taiwan

September 3, 1985.

On August 21, 1985, the American Institute in Taiwan (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products for Taiwan, requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of combed cotton yarn in Category 301, produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 301, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21385 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Yugoslavia

September 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 9, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 11, 1984 a notice was published in the **Federal Register** (49 FR 48207), which announced the establishment, under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 21 and 22, 1984, as extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, of a new specific limit for men's and boys' wool suit-type coats in Category 433, produced or manufactured in Yugoslavia and exported during the eighteen-month period which began on July 1, 1984 and extends through December 31, 1985. The notice further stated that the new limit could be adjusted for swing, but not for carryover or carryforward. A further notice was published on December 27, 1984 (49 FR 50234) which announced establishment of a limit for women's, girls, and infants' wool suits in Category 444, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1985. Under the terms of the bilateral agreement and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the limit for Category 433 is being increased by the application of swing to 12,075 dozen; the limit for Category 444 is being decreased to 6,990 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 3, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 6 and December 21, 1984, which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Yugoslavia.

Effective on September 9, 1985 the directives of December 6 and 21, 1984 are hereby amended to include adjusted restraint limits for wool textile products in the following categories:

Category	Adjusted restraint limit [1]
433	12,075 doz.
444	6,990 doz.

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1984 (Category 433) or December 31, 1984 (Category 444).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21384 Filed 9-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Certification of Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands from Imported Parts

September 4, 1985.

On March 4, 1985 a notice was published in the **Federal Register** (50 FR 8650) which announced that, effective on April 15, 1985, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which are determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), which are certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 70,000 dozen. This

limited exception is to be effective for sweaters exported during the period which began on November 1, 1984 and extends through October 3, 1985.

The notice also stated that a certification stamp would be required as verification of assembly in the CNMI. A facsimile of the stamp has been provided by CNMI authorities and is published as an enclosure to the letter to the Commissioner of Customs which follows this notice. The following CNMI officials have been authorized to issue the certifications:

Major Pete P. Reyes, Chief, Customs Services Division
Capt. Joaquin B. Cruz, Asst. Chief, Customs Services
Lt. Henry M. Sablan,
Lt. Herman S. Taitano

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 27, 1985, which directed you, effective on April 15, 1985, to permit entry or withdrawal from warehouse for consumption in the United States of 70,000 dozen cotton, wool and man-made fiber textile products in certain specified categories, produced in any foreign country or foreign territory, which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985. The directive stated that a facsimile of the certification stamp would be provided when received from authorities in the CNMI.

Enclosed is a facsimile of the stamp that will be used to certify the exports described above. A shipment shall be certified by the placing of an original circular stamped marking in blue ink on the front of the original commercial invoice. Each certification stamp shall include its visa number, date of issuance, quantity of the shipment in dozens, the correct category, the signature of the authorized issuing official, and the country of origin. The stamp will also include a statement certifying that assembly was performed in the CNMI. Any shipment which is not accompanied by a valid and correct certification shall be denied entry unless the Government of the Commonwealth of the Northern Mariana Islands specifically authorizes entry for a qualified shipment under this exemption. The foregoing notwithstanding, if the quantity indicated on the certification stamp is more than that of the qualified shipment, entry shall be permitted.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

Enclosure.

CERTIFICATION STAMP FOR CERTAIN SWEATERS ASSEMBLED IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND EXPORTED TO THE UNITED STATES



[FR Doc. 85-21383 Filed 9-6-85; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Parent Subsidiary Verification System

The annual publication entitled, "100 Companies Receiving the Largest Dollar Volume of Prime Contract Awards," provides total DoD awards reported during a fiscal year to a company and all of its subsidiaries. To ensure that the published data are accurate, a listing is sent to the companies likely to appear in this publication requesting information on their subsidiaries. The companies are not required to respond.

Business Firms.

Responses 150.
Burden hours 300.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Cynthia Springer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0665.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–21472 Filed 9–6–85; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee: Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 129. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 129 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

CIVILIAN PERSONNEL PER DIEM BULLETIN NUMBER 129
TO THE HEADS OF THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS
SUBJECT: TABLE OF MAXIMUM PER DIEM RATES IN LIEU OF SUBSISTENCE FOR UNITED STATES GOVERNMENT CIVILIAN OFFICERS AND EMPLOYEES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTH OF PUERTO RICO AND POSSESSIONS OF THE UNITED STATES

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702 (a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 128 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$19
Anaktuvuk Pass	140
Anchorage	116
Atqasuk	215
Barrow	139
Bethel	138
Coldfoot	122
College	104
Cordova	124
Deadhorse	131
Dillingham	114
Dutch Harbor-Unalaska	105
Eielson AFB	104
Elmendorf	116
Fairbanks	104
Ft. Richardson	116
Ft. Wainwright	104
Juneau	109
Ketchikan	113
Kodiak	129
Kotzebue [2]	123
Murphy Dome [3]	104
Noatak	123
Nome	136
Noorvik	123
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	131
Sand Point	103
Shemya AFB [3]	30
Shungnak	123
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	129
St. Mary's	100
Tanana	136
Valdez	129
Wainwright	165
Wrangell	113
Yakutat	100
All other localities [3]	90
American Samoa	81
Guam M. I.	91
Hawaii:	
Hawaii, Island of	63
Oahu	94
All other islands	85
Johnston Atoll [2]	23
Midway Islands [1]	13
* Puerto Rico:	
Bayamon:	
12-16—5-15	132
5-16—12-15	105
Carolina:	
12-16—5-15	132
5-16—12-15	105
Fajardo (including Luquillo):	
12-16—5-15	132
5-16—12-15	105
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	132
5-16—12-15	105
Ponce (including Ft. Allen NCS)	99
Roosevelt Roads:	
12-16—5-15	132
5-16—12-15	105
Sabana Seca:	
12-16—5-15	132
5-16—12-15	105
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	132
5-16—12-15	105
All other localities	111
* Virgin Islands of U.S.:	
12-1—4-30	126
5-1—11-30	112
Wake Island [3]	20
All other localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters of US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21475 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Software; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 22-23 October and 26 November 1985 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. The meetings on 22-23 October and 26 November 1985 will consist of briefings on various DoD software activities and discussion by the Task Force members on these various initiatives.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, approximately one week prior to the scheduled meeting times. Space is limited and will be awarded on a first come first served basis. Telephone: (202) 695-7181.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21473 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

ACTION: Notice of Meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management will meet September 17 to September 18, 1985 at 736 Jackson Place NW., Washington, DC 20503.

AGENDA: September 17 to September (0900-1530): Presentations and discussions will focus on DoD Acquisition Management procedures and policies.

FOR FURTHER INFORMATION CONTACT: Any additional information concerning the meeting may be obtained from Mr. Herb Hetu, 1835 K Street #400, Washington, DC 20006, telephone (202) 638-0799 or (202) 395-3198.

Dated: September 4, 1985.

Linda M. Lawson

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21469 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement (Pending Legislative Change)

Report of DOD and Defense Related Employment

DD Form 1787 is completed by former military members 0-4 and above, and civilian employees GS-13 and above, who are released by DOD and employed by a Defense contractor awarded a negotiated contract of $10 million or more. Civilians employed by DOD from a Defense contractor (negotiated contract of $10 million or more).

Individuals, Responses 2,400, Burden hours 1,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This is not for contract.

Dated: September 3, 1985.

Linda M. Lawson,

A Hernate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21474 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a DEIS on a Regulatory Plan for Regulating Commerical Dredging Activities in the Kansas River, KS

1. *Description of Proposed Action:* Commercial sand and gravel dredgers desiring to operate on the Kansas River in Kansas are required to secure a permit from the US Army Corps of Engineers in accordance with Section 10 of the Rivers and Harbors Act of 1899. In response to various questions and issues which have been raised in recent years regarding the impacts commercial dredging activities may have on the river, the Kansas City District, Corps of Engineers (KCD) conducted several studies which addressed potential impacts on the morphology and ecology of the river system. It was concluded from these studies that commercial dredging activities have had an adverse impact on the river system and that continued dredging has a high potential to further adversely impact the system. Subsequently, KCD determined that a Regulatory Plan should be developed and used as a guide in issuing or denying permits for commercial sand and gravel dredging on the Kansas River. Notice is hereby given that a Draft Environmental Impact Statement (DEIS) will be prepared to assess the impacts associated with implementation of such a plan.

2. *Description of Reasonable Alternatives:* Alternatives which will be considered during preparation of the DEIS range from eliminating all Kansas River commercial dredging to expanding the existing level of dredging. Between these extremes, various other alternatives will be examined, some of which could include limitations on distances between adjacent dredges, restrictions on the maximum number of dredges in a particular reach, and restrictions on the quantity of material to be extracted from a given reach.

3. *Description of Scoping Process:*

a. The US Environmental Protection Agency, US Fish and Wildlife Service, and the State of Kansas have been requested to act as cooperating agencies in the preparation of the DEIS; the Kansas City District, Corps of Engineers, will be the lead agency.

b. A Scoping Meeting will be held on October 9, 1985, at 7:30 P.M. in the Community Room of the Commercial State Bank, 309 Oak, Bonner Springs, Kansas. All members of the public, special interest groups, local, state, and Federal agencies, and other interested parties are invited to attend.

4. *Date of EIS:* It is estimated that the DEIS will be made available for public review and comment in June, 1986.

5. Questions regarding the proposed DEIS should be directed to Mr. Michael Bronoski, Biologist, US Army Corps of Engineers, ATTN: MRKPD-R, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896. Commercial telephone 816-374-3358 or FTS 758-3358.

Dated: August 29, 1985.

Philip L. Rotert,

Chief, Planning Division.

[FR Doc. 85-21378 Filed 9-6-85; 8:45 am]

BILLING CODE 3710-KN-M

Defense Logistics Agency

Public Information Collection Requirement submitted on OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Assignment and Verification of Commercial and Government Entity (CAGE) Code

The Defense Logistics Agency, office of the Secretary of Defense needs the DD Forms 2051/2051-1 to verify name, address and affiliation required by Title 10 U.S.C., Chapter 145, and also to acquire socio-economic data in compliance with Presidential Executive Order 12138, and the Small Business Act, form all entities, contractors that do business with the Government. These forms are used exclusively by Government activities. The DD Form 2051 is used to make the initial solicitation for information for code assignment. The DD Form 2051-1 is for triennial verification of the information recorded in the central data bank for each entity assigned a code. Additionally, these forms may be used to report changes, in each entity's status as they occur. The Defense Logistics Services Center (DLSC) is responsible for assigning CAGE codes.

Business Firms—Small Business or Organizations.

Responses 95,660.

Burden hours 23,915.

Information is elicited on a voluntary basis.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, Telephone 202/746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Gladys Frye, Action Officer, Defense Logistics Agency, ATTN: DLA-SC, Cameron Station, Alexandria, Virginia 22304-6100, telephone 202/274-6491.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21470 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Regular

Government Industry Reference Data Edit and Review (GIRDER)

The GIRDER report is the only method available to verify manufacturer's names and part numbers which are associated with National Stock Numbers (NSNs) in the Federal Catalog System. This Federal Catalog System maintenance avoids erroneous invitations to bid and erroneous NSN assignment and is in consonance with the intent of Title 10 U.S.C., Chapter 145.

Business Firms—Small Business or Organizations.

Responses 100.

Burden hours 2,270.

Information is elicited on a voluntary basis.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Gladys Frye, Action Officer, Defense Logistics Agency, ATTN: DLA-SC, Cameron Station, Alexandria, Virginia 22304-6100, telephone 202/274-6491.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21471 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Defense Mapping Agency Advisory Committee on Mapping, Charting and Geodesy (MC&G); Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DMA Advisory Committee on MC&G has been scheduled as follows:

Thursday, 19 September 1985, Defense Mapping Agency, Washington, D.C. and Friday 20 September 1985, DMA Special Program Office for Exploitation Modernization, McLean, Virginia. The entire meeting, commencing at 0800 hours each day is devoted to the

discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and, therefore, will be closed to the public. The Committee will receive briefings on and discuss several current critical MC&G issues and advise the Director, DMA on related scientific and technical matters.

Dated: September 3, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-21476 Filed 9-6-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Council on Educational Research; Full Council Meeting

Matters to be Discussed: Receive committee reports, Reports from the Acting Director of the National Institute of Education; and the Assistant Secretary for the Office of Educational Research and Improvement; and Council business:

Date: September 19th and 20th, 1985.

Address: National Institute of Education, 1200 19th Street NW. Washington, DC (Room 823).

Status: Open.

Time: September 19, 9:00 a.m.–5:00 p.m.; September 20, 9:00 a.m.–12:00 noon.

For Further Information Contact: Patricia Hines, National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, 202–254–7490.

Supplementary Information: The National Council on Educational Research is established under Section 405 of the General Provisions Act.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Council on Educational Research at 2000 L Street, NW., Suite 617–B, Washington, DC 20036 between the hours of 9:00 a.m. to 5:00 p.m.

A summary of the activities and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: September 3, 1985.

Patricia Hines,

National Council on Educational Research.

[FR Doc. 85-21370 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 9, 1985.

ADDRESSES: Written comments should be addresse to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 3, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review Requested: Revision
Title: Performance Report and Recordkeeping—Bilingual Education Programs
Agency Form Number: T85–3P
Frequency: Close-out
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden, Responses: 250; Burden Hours: 11,250
Recordkeeping Burden, Recordkeepers: 875; Burden Hours: 31,500

Abstract: Grantees are required under Education Department General Administrative Regulations (EDGAR), 34 CFR 74.82, to submit a final performance report which is used to monitor compliance with program requirements. In addition, grantees are required to adhere to the recordkeeping requirements in 34 CFR 74.20–74.25.

Office of Educational Research and Improvement

Type of Review Requested: Revision
Title: Library Services and Construction Act (P.L. 98–480) Application and Project Plans for State Administered Programs—Titles I, II and III
Agency Form Number: ED 921 and ED 915
Frequency: Annually
Affected Public: States
Reporting Burden, Responses: 54; Burden Hours: 2,430
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: The application, consisting of the Basic State Plan, the Long-range Program and the Annual Program, is a required submission from States in order to receive Federal funds under Title I (Library Services), Title II (Public Library Construction), and Title III (Interlibrary Cooperation and Resource Sharing) of the Library Services and Construction Act, as amended by P.L. 98–480.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Program Announcements—Fund for the Improvement of Postsecondary Education—New Awards and Continuations
Agency Form Number: ED 0001 and ED 0002
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden, Responses: 1.5; Burden Hours: 30,189
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This is a grant application for competitive awards with a two-stage application process: preliminary and final. Continuation awards are granted only to those postsecondary institutions

currently receiving grants and whose progress has been satisfactory.

[FR Doc. 85-21456 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Septemaber 24–25, 1985, 9:00 A.M. until conclusion of business each day.

ADDRESS: Fort Washakie Tribal Council Chambers, Fort Washakie, Wyoming 82514 (307/225–8257).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, N.W., Suite 574, Washington, D.C. 20036 (202)/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) NACIE Budget—FY '85 & '86;
(2) NACIE activities for FY '86;
(3) Committee activities for FY '86;
(4) Other Business;
(5) Public testimony;
(6) On-site visits to Indian Education Programs and Schools in the Riverton, Wyoming area (September 25, 1985).

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 2000 L Street, N.W., Suite 574, Washington, D.C. 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C.

Dated: September 4, 1985.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85-21460 Filed 9-6-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Publication of Sample Cases and Expected Parental Contributions for the National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Correction notice and extension of closing date.

On July 22, 1985, the Secretary of Education published in the **Federal Register** a notice of sample cases and expected parental contributions that the Secretary will use to approve need analysis systems for award year 1986–87 under the campus-based programs (50 FR 29720–29721).

This notice corrects the asset protection allowance on page 29720, Column 3, line 31 to read "$31,500."

Also as a result of this error, the "August 21, 1985" closing date is extended to October 10, 1985.

Dated: September 4, 1985.

(Catalog of Federal Domestic Assistance No. 84.038 National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007 Supplemental Educational Opportunity Grant Program)

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education

[FR Doc. 85-21455 Filed 9-6-85; 8:45 am]

BILLION CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Request for Comments on Proposed Revision of Form RW-859

AGENCY: Department of Energy.

ACTION: Notice of the proposed revision of Form RW–859, "Nuclear Fuel Data" and solicitation of comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing information collections. This program helps ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, the EIA, in cooperation with the Office of Civilian Radioactive Waste Management (OCRWM), is proposing a revision of Form RW–859, "Nuclear Fuel Data." This form collects historical and projected data on spent nuclear fuel inventories, characteristics, and movements, and on handling and storage capabilities from the operators of all operating and planned commercial nuclear power plants. After approval by the Office of Management and Budget (OMB) is obtained, the EIA will begin using the revised form in early 1986 to collect calendar year 1985 data.

DATES: Written comments must be submitted on or before October 9, 1985.

FOR FURTHER INFORMATION, OR TO OBTAIN COPIES OF THE REVISED FORM, CONTACT: Kathy Gibbard (EI–531), Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration, Room 2F–048, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252–1718.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Current Action.
III. Comment Procedures.

I. Background

Pursuant to section 205(a)(2) of the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7132(a)(2)), the Energy Information Administration is responsible for carrying out a central, comprehensive, and unified energy data and information program. The program collects, evaluates, assembles, analyzes, and disseminates data and information in support of the DOE's Office of Civilian Radioactive Waste Management (OCRWM). Every operator of a nuclear power plant shall file annually the Form RW–859 with respect to each qualifying reactor that it operates or is responsible for constructing. A qualifying plant is any existing or planned commercial nuclear fueled unit which generates electricity to be sold commercially. A planned unit is one that is expected to be in commercial service within 7 years of the end of the reporting year. The form must also be completed by all others who possess irradiated nuclear fuel generated in commercial nuclear reactors. The form must be submitted within 30 working days of receipt of the preprinted form or by February 13 of the year following the calendar year being reported, whichever occurs later.

II. Current Action

Judging from the initial data collection using the RW–859, the information that the EIA and the OCRWM desired was not always clear to the respondents. To clarify the required information, we are proposing several resivions to the Form RW–859. First, questions concerning the types of assemblies storable in pools, when the reactor will run out of storage space, the utility's plans for applying for the Federal Interim Storage Program, and information on roadway and rail access to the reactor have been added. Questions on pool configurations, specific cycle information relating to data as of midnight, April 6, 1983, and to the number of Effective Full Power Days per cycle have been deleted. The method required for presenting aggregate data on irradiated fuel in handwritten form has been changed; utilities now must provide these data on assembly level of detail in machine readable form. The method of submitting data on unirradiated fuel has also been changed from machine readable form to handwritten form.

For the data collection using the revised Form RW–859 with the proposed changes, it is estimated that the average time required to complete the form will be 53.3 hours. This amounts to a 66.7 percent reduction in reporting burden from last year's figure of 160 hours per response when respondents were required to submit and verify a considerable amount of historical data. For future collections, respondents will be required to verify the accuracy of previously submitted historical data which will be preprinted on the form.

III. Comment Procedures

To solicit comments on this proposed revision, copies are being sent to the affected nuclear power plant operators concurrent with publication of this notice. Other interested persons or organizations are also invited to participate by submitting information, views, or proposed changes. Comments should be submitted no later than October 9, 1985, to the address indicated above in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice and should be identified on the outside envelope and on the document with the designation: "Proposed Revision To The Data Collection Form: RW–859."

The following general guidelines are provided to assist in the preparation of responses:

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will your utility require to complete and submit a form for each reactor?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for OMB approval of the data collection and will become a matter of public record.

Issued in Washington, DC, September 4, 1985.

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 85–21436 Filed 9–6–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA85–16–20–000,001]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 30, 1985.

Take notice that Algonquin Gas Transmission Company (Algonquin Gas) on August 15, 1985 tendered for filing Sixth Revised Sheet No. 203 and Seventeenth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1. According to § 381.103(b)(2), (iii) of the Commission's regulations (18 CFR 381.103(b)(2)((iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 28, 1985.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–2 and Rate Schedule S-IS decreases in Consolidated Gas Transmission Corporation's (Consolidated) underlying Rate Schedule RQ and Rate Schedule E, as set forth in their semi-annual PGA filing.

Algonquin Gas requests that the Commission accept Sixth Revised Sheet No. 203 and Seventeenth Revised Sheet No. 213, to be effective September 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protestants should be filed on or before September 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. And person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21397 Filed 9–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA 85–3–40–000,001]

Raton Natural Gas Co.; Change in Rates

August 30, 1985.

Take notice that Raton Natural Gas Company (Raton), on August 28, 1985, tendered for filing, proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of Thirty-fifth Revised Sheet No. 3a. The change in rates is for jurisdictional gas service. The proposed effective date is September 28, 1985.

Raton states that the instant of change in rates is occasioned solely for changes in cost of gas purchased from Colorado Interstate Gas Company (CIG). The tracking of CIG gas cost change results in increase of $3.95 per MCF Demand

Charge and decrease of 41.34 per MCF in Commodity Charge. On an annual basis the changes result in a revenue decrease of $60,215.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21402 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-002]

Sea Robin Pipeline Co; Filing of Revised Tariff Sheets

August 30, 1985.

Take notice that on August 23, 1985 Sea Robin Pipeline Compay (Sea Robin) tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Forty-First Revised Sheet No. 4
Twenty-First Revised Sheet No. 4-a

Original Volume No. 2

Twenty-Fourth Revised Sheet No. 127-D
Twenty-Fourth Revised Sheet No. 135-C

According to section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 28, 1985.

Sea Robin states that these tariff sheets have been filed in compliance with the Commission's Order issued July 24, 1985, in the above-style docket." Paragraph (D) of the July 24, 1985 order required Sea Robin to file revised tariff sheets to reflect the Commission's decision in Opinion No. 227-A within thirty days of the issuance of said order to be effective July 1, 1985.

Sea Robin states that it mailed copies of the proposed tariff sheets and supporting data to its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21403 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-42-000]

Southeastern Gas Co.; Petition for Declaratory Order

Issued August 30, 1985.

Take notice that on August 7, 1985, Southeastern Gas Company (Southeastern) filed a petition for a declaratory order pursuant to section 207(a)(2) of the Commission's Rules of Practice and Procedure, requesting the Commission to declare that it is proper to collect a uniform price for gas sold to each of its Kentucky customers based on the weighted average of the applicable NGPA ceiling price for all gas produced by Southeast and sold to Kentucky customers.

The gas involved is gathered from approximately 92 wells located in eastern Kentucky. The production from wells that serve Kentucky customers is subject to sections 104, 107 and 108 of the NGPA. A small amount of this gas is sold to 121 domestic customers located within one-half air mile of Southeastern's gathering system as required by Kentucky law. Kentucky customers are served by those wells located upstream of the delivery points on Southeastern's system. Since the gas does not arrive at a single commingling point prior to being delivered to the various domestic customers, customers in the same locale may purchase gas from wells qualified under different NGPA categories or may receive a gas mix combining several NGPA pricing categories.

Southeastern states that it would be inequitable to charge similarly situated customers different rates for gas based solely on their proximity to upstream wells that are qualified under different NGPA categories. In addition, Southeastern states that calculating the various NGPA rates imposes an administrative burden. Finally, Southeastern states that the Commission has approved a virtually identical NGPA pricing methodology, also involving consumers in eastern Kentucky, in *Ashland Exploration Inc.*, 17 FERC ¶ 61,305 (1981).

Southeastern requests expeditious treatment of its petition and requests that the notice period be reduced to the shortest reasonable time. For good cause shown, the normal notice period is shortened.

Within fifteen days of publication of this notice in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. If you wish to become a party, you must file a petition to intervene pursuant to Rule 214. 18 CFR 385.214 (1984).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21404 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-192-000]

Southern Natural Gas Co.; Compliance Filing

August 30, 1985.

Take notice that on August 27, 1985, Southern Natural Gas Company (Southern) tendered for filing Third Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states that this filing is being made pursuant to Ordering Paragraph (B) of the Federal Energy Regulatory Commission's June 7, 1985 order in Docket No. CP85-464-000 and that the revised sheet sets forth the rates to be effective under its Flexible Discount Rate Schedule during September of 1985. Southern is requesting an effective date of September 1, 1985.

Southern indicates that copies of the filing have been mailed to all its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21405 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-191-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Filing of Tariff Rate Adjustment Provisions

(August 30, 1985)

Take notice that on August 27, 1985 Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective September 27, 1985:

Original Volume No. 1

Original Sheet No. 203
First Revised Sheet Nos. 53, 212, 329
Second Revised Sheet Nos. 198, 202
Third Revised Sheet No. 199
Fourth Revised Sheet No. 200
Sixth Revised Sheet No. 201

Tennessee states that the purpose of this filing is to revise the Purchased Gas Adjustment (PGA) provision of its tariff to recover its purchased gas costs on an "as-billed" basis.

Tennessee states that under the as-billed method, Tennessee will recover the demand component of its purchased gas costs, comprised of demand charges form Tennessee's suppliers, through the demand charge in Tennessee's rate schedules with three-part rates (demand, commodity and gas) and through the commodity charge, reflecting an imputed load factor, in Tennessee's rate schedules with two-part rates (commodity and gas). Tennessee will recover the remainder of its purchased gas costs through its gas rates. Tennessee will maintain separate demand and gas subaccounts to record the demand and gas components of the unrecovered cost of purchased gas in Account 191 and to compute the demand and gas surcharges required to amortize the balance of unrecovered purchased gas costs in Account 191. Tennessee further states that it intends to reflect the as-billed method in its next scheduled PGA rate change to be filed on May 31, 1985.

Tennessee states it is also cancelling its Rate Schedule SO-4 because that Commission has now permitted Tennessee to abandon all sales pursuant to that rate schedule.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regualtory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21406 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-6-29-000, 001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 30, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on *August 23,* 1985 tendered for filing Substitute Revised Thirty-Fifth Revised Sheet No. 12 and Second Substitute Thirty-Sixth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective dates of these tariff sheets are August 1, 1985 and September 1, 1985, respectively. The revised tariff sheets reflect a rate increase, in accordance with section 4.1(c) of Transco's Rate Schedule LSS, which is attributable to increased rates for storage service rendered by Penn-York Energy Corporation (Penn-York).

As a result of Penn-York's filing of July 31, 1985 in Docket No. RP85-69-002 which resulted in an increase in Penn-York's monthly capacity charge for service to Transco under Penn-York's Rate Schedule SS-1, Transco is increasing the monthly capacity charge from 5.16¢ per dt of annual storage capacity to 5.39¢ under Transco's Rate Schedule LSS.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21407 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-130-028]

Transwestern Pipeline Co.; Proposed Changes In FERC Gas Tariff

August 30, 1985.

Take notice that Transwestern Pipeline Company (Transwestern) on August 27, 1985 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet: Substitute Second Revised Sheet No. 38.

The above mentioned tariff sheet is being filed pursuant to Article VI of Transwestern's Stipulation and Agreement dated May 9, 1985 in Docket Nos. RP81-130 *et al.* and RP83-25 *et al.* which was approved, subject to certain modifications on July 1, 1985. Substitute Second Revised Sheet No 38 sets forth Transwestern's discounted transportation rate to be charged for service under Rate Schedule TS-1 effective September 1, 1985.

On August 26, 1985, Transwestern filed with the Commission Second Revised Sheet No. 38 which reflected a discounted transportation rate under Rate Schedule TS-1 of $.2200/dth proposed to be effective September 1, 1985. The instant filing is being made in order to amend and replace in its entirety the August 26, 1985 filing and to provide for a discount rate effective September 1, 1985 of $.1682/dth.

The proposed effective date of the above tariff sheet is September 1, 1985.

Copies of the filings were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21408 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9291-000, et al.]

Hydroelectric Applications (Tery Drager et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Small Conduit Exemption.

b. Project No.: 9291-000.

c. Date Filed: June 13, 1985.

d. Applicant: Tery Drager.

e. Name of Project: Drager, Jones, Timmons Power Project.

f. Location: On existing irrigation diversion from Clark Creek approximately 5 miles South of Etna, in Siskiyou County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act (16 U.S.C. 823(a)).

h. Contact Person: Mr. Tery Timmons Drager, P.O. Box 255, Ben Lomond, CA 95005.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would be located on an existing irrigation diversion channel from Clark Creek and consists of a 12-inch-diameter, 5,280-foot-long penstock, a 20-foot-long, 15-foot-wide powerhouse containing appurtenant electrical installations and a generator with a rated capacity of 25 kW. The Applicant estimates that the average annual energy generation would be 208.05 kWh and sold to Pacific Power and Light Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

2 a. Type of Application: 5-MW Exemption.

b. Project No.: 9003-000.

c. Date Filed: March 6, 1985.

d. Applicant: Northern States Power Company.

e. Name of Project: Riverdale Hydro.

f. Location: Apple River, St. Croix County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702.

i. Comment Date: October 15, 1985.

j. Description of Project: The project would consist of: (1) An existing concrete gravity dam, 163 feet long and 32 feet high, flanked by 15-foot-high earth dikes on each side, approximately 180 feet long on the left, and 350 feet long on the right side of the dam; (2) an existing reservoir with a surface area of 86 acres and a gross storage capacity of 569 acre-feet; (3) an existing powerhouse integral with the dam, containing 2 generating units with a nameplate capacity of 250 kW each, which would be rewound and upgraded to a total generating capacity of 620 kW; (4) an existing tailrace, approximately 90 feet long; and (5) appurtenant facilities. The estimated average annual generation of 3,610,000 kWh would be used in the applicants interconnected system.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

l. This notice also consists of the following standard paragraph: A3, A9, B, C and D3a.

3 a. Type of Application: 5-MW Exemption.

b. Project No.: 9002-000.

c. Date Filed: March 6, 1985.

d. Applicant: Northern States Power Company.

e. Name of Project: Apple River Hydro.

f. Location: Apple River, St. Croix County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702.

i. Comment Date: October 15, 1985.

j. Description of Project: The project would consist of: (1) An existing concrete and masonry gravity type diversion dam, approximately 343 feet long and 47 feet high, (2) an existing reservoir with a surface area of 52 acres and a gross storage capacity of 668 acre-feet; (3) an existing, 313-foot-long, 12-foot-diameter penstock; (4) an existing powerhouse containing 4 generating units with a name plate capacity of 750 kW each, which would be rewound and upgraded to a total generating capacity of 3,700 kW; (5) an existing tailrace, approximately 220 feet-long; and (6) appurtenant facilities. The estimated average annual generation of 13,507,700 kWh would be used in the applicant's interconnected system.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

l. This notice also consists of the following standard paragraph: A3, A9, B, C, and D3a.

4 a. Type of Application: Amendment of License.

b. Project No.: 503-002.

c. Date Filed: January 22, 1985.

d. Applicant: Idaho Power Company.

e. Name of Project: Swan Falls.

f. Location: On the Snake River in Ada and Owyhee Counties, Idaho, partially on lands of the United States administered by the U.S. Department of the Interior.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul L. Jaurequi, Idaho Power Company, P.O. Box 70, Boise, ID 83707.

i. Comment Date: October 15, 1985.

j. By order issuing new license for Project 503 on December 22, 1982, Applicant was authorized to construct the following new project works, which would replace corresponding existing works: (1) A gated spillway structure; (2) a powerhouse containing two generating units with a total rated capacity of 25 MW (the existing powerhouse has a rated capacity of 10.2 MW); (4) a 1.2-mile-long, 138-kV transmission line connecting to a line owned and operated by Applicant; (5) a 120-foot-wide, 1,400-foot-long tailrace channel; and (6) a 700-foot-long access road.

In its application for amendment, Applicant proposes to postpone

replacing the existing powerhouse and generating units until such time as the additional capacity is needed.

k. This notice also consists of the following standard paragraphs: B, C and D1.

5 a. Type of Application: Amendment of License.

b. Project No.: 4800–002.

c. Date Filed: April 25, 1985.

d. Applicant: City of Bountiful, Utah.

e. Name of Project: Moon Lake Hydroelectric Project.

f. Location: On Lake Fork River in Duchesne County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Dean S. Stahle, Mayor, City of Bountiful, 790 South 100 East, Bountiful, Utah 84010.

i. Comment Date: October 15, 1985.

j. Description of Project: Project No. 4800 as licensed on June 10, 1983 consisted of (Paragraph (B)(2)): (1) Two steel penstocks, one 48-inches in diameter and 7,500 feet long (No. 1), and the other 24-inches in diameter and 300 feet long (No. 2)—with No. 1 leading to (2) a lower powerhouse containing a turbine-generator unit having a rated capacity of 4,250 kW, and with No. 2 leading to (3) an upper powerhouse containing a turbine-generator unit having a rated capacity of 475 kW; (4) two tailraces; (5) 12.5-kV transmission lines and an interconnection to a 69-kV transmission system; and (6) appurtenant facilities. The total capacity of the two powerplants is 4,725 kW.

The proposed amendment would change: (1) The 48-inch-diameter penstock to 62-inch-diameter, and the 24-inch-diameter penstock to 34-inch-diameter; (2) one 4,250 kW turbine-generator unit to 2 turbine-generator units having a total capacity of 4,550 kW; and (3) a 475 kW turbine-generator unit to a 400 kW one. The total capacity of the two powerplants would change from 4,725 kW to 4,950 kW. The total estimated average annual generation would change from 14.8 million kWh to 19.9 million kWh.

k. Purpose of Exemption: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraph: B, C and D1.

6 a. Type of Application: Amendment of License.

b. Project No.: 2365–005.

c. Date Filed: September 18, 1984.

d. Applicant: Madison Paper Industries.

e. Name of Project: Anson.

f. Location: On the Kennebec River in Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jack E. Chinn, President, Madison Paper Industries, P.O. Box 129, Madison, ME 04950.

i. Comment Date: September 30, 1985.

j. Description of Project: The project as licensed consists of: (1) A concrete gravity type dam approximately 38 feet high and with an overall length of about 630 feet topped with 5-foot flashboards (except for a 50-foot section) and having a crest elevation of 241.67 feet (U.S.C. & G.S.); (2) a 14-foot log sluice; (3) a 50-foot waste gate section near the powerhouse; (4) a powerhouse integral with the dam equipped with five turbines rated 1,500 hp each, connected to five generators with a total installed capacity of 9,000 kW; and (5) appurtenant facilities. Project energy would continue to be sold to the Central Maine Power Company.

The Applicant proposes to amend the license by increasing the gross head at the powerhouse by 3 feet by constructing a 400-foot-long replacement dam 100 feet downstream of the existing dam. No additional capacity is proposed; however, the increased gross head will increase the average annual generation from 46,000 MWh to 55,000 MWh.

k. This notice also consists of the following standard paragraphs: B, C, and D1.

7 a. Type of Application: Amendment of Exemption.

b. Project No.: P–4008–005.

c. Date Filed: March 19, 1985.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Dolgeville Project.

f. Location: On the East Canada Creek, near the Village of Dolgeville in Herkimer and Fulton Counties, New York..

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act) 16 U.S.C. 2705 and 2708.

h. Contact Person: Paul J. Elston, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: September 30, 1985.

j. Description of Project: The project as exempted consists of: (1) An existing limestone gravity dam 19.5 feet high and 190 feet long; (2) 2-foot-high flashboards; (3) an existing reservoir having a surface area of 16 acres, a storage capacity of 207 acre-feet, and a normal water surface elevation of 736 feet m.s.l.; (4) one gate leading to a 12-foot-diameter fiber-glass penstock 710 feet long; (5) a powerhouse containing one 5.0 MW generating unit; (6) a tailrace; (7) a 50-foot-long, 46-kV transmission line; and (8) appurtenant facilities. The Exemptee estimates the average annual generation is 17,500,000 kWh.

The Exemptee proposed to amend the exemption by: (1) replacing the 2-foot-high flashboards with 4-foot-high flashboards; and (2) increasing the reservoir surface area to 31.2 acres, the storage capacity to 244 acre-feet, and the normal water surface elevation to 738 feet msl. The estimated annual generation would be increased to 19,000,000 kWh.

k. Purpose of Project: All project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: B, C, and D3a.

8 a. Type of Application: License (5 MW or Less).

b. Project No.: 6907–001.

c. Date Filed: December 24, 1985.

d. Applicant: Georgia Hydro Associates.

e. Name of Project: High Falls Hydropower Project.

f. Location: On the Topwaliga River in Monroe County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Philip M. Hoover, Synergics, Inc., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: October 18, 1985.

j. Description of Project: The High Falls Dam is owned by the state of Georgia. The proposed project consists of: (1) The existing 606-foot-high and 35-foot-long, stone and mortar dam; (2) the existing reservoir with a surface area of 573 acres and a storage capacity of 8,600 acre-feet at powerpool elevation of 587 feet m.s.l.; (3) an existing 20-foot-wide by 10-foot-deep by 1,600-foot-long power canal; (4) a proposed intake structure, which would be connected to the power canal; (5) a proposed 300-foot-long, 6-foot-diameter bifurcated penstock, which would be connected to the intake structure; (6) a proposed powerhouse containing two generating units rated at 1,000 kW each; (7) a proposed tailrace; (8) a proposed 1,500-foot-long, 12.5–kV transmission line; and (9) appurtenatnt facilities.

The estimated average annual energy output for the project is 6,500,000 kWh.

k. Purpose of Project: Power generated at the project would be sold either to the Georgia Power Company or the Municipal Electric Authority of Georgia.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No: 8964–000.

c. Date Filed: February 19, 1985.

d. Applicant: Cities of Colorado Springs and Aurora, Colorado.

e. Name of Project: Homestake Tunnel.

f. Location: Homestake Tunnel, near Leadville, in Lake, Pitkin, and Eagle Counties, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Lefebvre, Black & Veatch, Engineers-Architects, P.O. Box 8405, Kansas City, Missouri 64114 (913) 967–2164.

i. Comment Date: September 30, 1985.

j. Competing Application: Project No. 8349 Date Filed: June 5, 1984.

k. Description of Project: The proposed project would be located within the San Isabel National Forest and would consist of: (1) An existing 267-foot-high, 2,700-foot-long, earth-filled dam owned jointly by the Applicants; (2) the existing Homestake Reservoir with a surface area of 334 acres and a storage capacity of 44,360 acree-feet at power pool elevation 10,260 feet m.s.l.; (3) a 45-foot-long, 7-foot-diameter steel pipe which would be connected to the existing Homestake Tunnel; (4) a 75-foot-long, 4-foot-diameter steel penstock; (5) a concrete powerhouse containing a single turbine-generator unit with a rated capacity of 3,470 kW and producing an estimated average annual generation of 12.72 GWh; (6) a 25-foot-wide, 10-foot-long concrete tailrace discharging to Turquoise Lake; and (7) a 115-kV, 1,350-foot-long transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feaslibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

l. This notice also consists of the following standard paragraphs: A8, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9164–000.

c. Date Filed: May 2, 1985.

d. Applicant: Okeechobee Associates.

e. Name of Project: Kissimmee (Structure 65D).

f. Location: On the Kissimmee River at Canal 38 in Okeechobee County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Okeechobee Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers drop Structure 65D and would consist of: (1) A proposed 60-inch-diameter penstock, 40 feet long; (2) a new powerhouse, 90 feet by 30 feet, housing one turbine-generator unit with an installed capacity of 2,500 kW; (3) a proposed tailrace, 47 feet long and 30 feet wide; (4) approximately 51 feet of new transmission line at 12.5-kV; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 7.5 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9165–000.

c. Date Filed: May 2, 1985.

d. Applicant: Lorida Associates.

e. Name of Project: Structure 65B Hydro (Canal 38).

f. Location: On Canal 38 off the Kissommee River in Okeechobee County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Lorida Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers drop Structure 65D and would consist of: (1) A proposed 60-inch-diameter penstock, 40 feet long; (2) a new powerhouse, 90 feet by 30 feet, housing one turbine-generator unit with a rated capacity of 1,500 kW; (3) a proposed tailrace, 47 feet long and 30 feet wide; (4) approximately 591 feet of new transmission line at 12.5-kV; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 4.0 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9222–000.

c. Date Filed: May 22, 1985.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Yaleville.

f. Location: On the Raquette River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John H. Terry, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project would consists of: (1) An existing 15-foot-high, 170-foot-long concrete gravity dam; (2) a reservoir with a surface area of 80 acres, a storage capacity of 320 acre-feet, and a normal water surface elevation of 303.2 feet m.s.l.; (3) an existing 67-foot-long concrete intake structure; (4) an existing 60-foot-wide, 275-foot-long concrete forebay; (5) an existing concrete and brick powerhouse containing one existing generating unit with a capacity of 275 kW, one existing generating unit with a capacity of 125 kW, and two new generating units with a capacity of 500 kW each for a total installed capacity of 1,400 kW; (6) an existing 50-foot-wide, 200-foot-long concrete and rock-lined tailrace; (7) a new transmission line, 400 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 7,300,000 kWh. The existing dam is owned by the Niagara Mohawk Power Corporation.

k. Purpose of Project: Project power would be sold to the customers of the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to prepare an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $100,000.

13 a. Type of Application: Exemption from Licensing (5MW or less).

b. Project No: 9250–000.

c. Date Filed: May 23, 1985.

d. Applicant: Montana Natural Energy, Inc.

e. Name of Project: West Rosebud Creek Hydroelectric.

f. Location: On West Rosebud Creek, within Custer National Forest, near Columbus, in Stillwater and Carbon Counties, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Jay R. Bingham, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: September 30, 1985.

j. Description of Project: The proposed project would consist of: (1) A concrete intake structure with fish screening located on West Rosebud Creek at an elevation of 6,310; (2) a 13,250-foot-long, 48-inch-diameter steel penstock; (3) a powerhouse containing one generating unit with an installed capacity of 3,100 kW at a design head of 340 feet; and (4) a 500-foot-long, 50-kV buried transmission line connecting to an existing Montana Power Company transmission line. The estimated average annual generation would be 15.7 million KWh.

k. Purpose of Project: The project power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3a.

14 a. Type of Application: Minor License.

b. Project No.: 9252–000.

c. Date Filed: June 3, 1985.

d. Applicant: Glen Hydro, Inc.

e. Name of Project: Scytheville.

f. Location: On the Mascosma River in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas B. Cronmiller, Sulloway Hollis & Soden, 9 Capitol Street, Concord, NH 03301.

i. Comment Date: October 18, 1985.

j. Description of Project: The proposed project run-of-river project would consist of: (1) The existing 130-foot-long, and 11.5-foot-high Scytheville Dam with a spillway crest elevation of 488.3 feet mean sea level, owned by the City of Lebanon; (2) an impoundment with a surface area of 3 acres; (3) an existing intake structure at the north abutment; (4) a new 8-foot-diameter and 210-foot-long steel penstock; (5) a new reinforced concrete powerhouse with 3 turbine-generator units with a total installed capacity of 485 kW; (6) a new 165-foot-long tailrace; (7) a new 13.2 kV, 3-phase and 250-foot-long underground tramsmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 1,700,000 kWh. This application was filed within the Applicant's preliminary permit term for this project.

k. Purpose of Project: Project energy would be sold to the Granite State Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9339–000.

c. Date Filed: July 10, 1985.

d. Applicant: Thomas J. Collins.

e. Name of Project: Oregon Hydropower.

f. Location: On the Rock River in Ogle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(r)–825(r).

h. Contact Person: Mr. Thomas J. Collins, Suite 401, 600 West Jackson Boulevard, Chicago, IL 60606.

i. Comment Date: September 30, 1985.

j. Competing Application: Project No. 9173, Date Filed May 6, 1985. Due Date: August 19, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing dam about 867.5 feet long and 12 feet high; (2) an existing reservoir with a water surface area of 900 acres and storage capacity of 3,500 acre-feet at normal pool elevation of 670.50 feet NGVD; (3) a demolished powerhouse that will be reconstructed to house four generating units, each rated at 500 kW, for a total installed capacity of 2,000 kW; (4) a new 12,000-volt transmission line about 600 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 16,000,000 kWh. The dam is jointly owned by the State of Illinois and the City of Oregon, Illinois.

l. Purpose of Project: The applicant anticipates that project energy will be sold to utility companies or to industry.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $95,000.

16 a. Type of Application: Minor License.

b. Project No.: 8997–000.

c. Date Filed: March 4, 1985.

d. Applicant: Great Bear Hydropower, Inc.

e. Name of Project: Riegelsville.

f. Location: On the Musconetcong River in Pohatcong Township, Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Terence P. McDonnell, President, Great Bear Hydropower, Inc., General Delivery, Tranquility, NJ 07879.

i. Comment Date: October 18, 1985.

j. Competing Application: Project No. 8325–000. Date Filed May 29, 1984.

k. Description of Project: The proposed project would consist of: (1) The removal of the existing wood and rock-filled diversion dam to be replaced by a three-foot-high, reinforced concrete gravity dam tied into the existing foundation; (2) the proposed concrete dam will be equipped with 18-inch-high flashboards; (3) an existing 1-acre reservoir which will become enlarged to 3.5 acres with the installation of the 18 inch-high flashboards; (4) the restoration of the 0.9-mile-long power canal; (5) an existing powerhouse with a 250-kW generator which will be rehabilitated; (6) a proposed 160-foot-long, 4.8 kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy output to be 450 MWh.

l. Purpose of Project: The applicant proposes to sell the power to the Jersey Central Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Secton 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will

be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 4, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21409 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-776-000, et al.]

Florida Gas Transmission Co. et al.; Natural Gas Certificate Filings

August 29, 1985.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP85-776-000]

Take notice that on August 13, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP85-776-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for E. I. DuPont de Nemours and Company (DuPont) of certain quantities of natural gas from an existing point of interconnection between the facilities of FGT, Transcontinental Gas Pipe Line Corporation (Transco) and Tennessee Gas Transmission Company, a Division of Tenneco Inc. (Tennessee), in Calcasieu Parish, Louisiana, to an existing point of interconnection between FGT's and Longhorn Pipeline Company's (Longhorn) facilities in Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that DuPont has contracted to purchase certain supplies of gas to be produced from the outer continental shelf area, offshore Louisiana, and has made arrangements with Transco and Tennessee to have certain volumes of said gas delivered to FGT for DuPont's account at an existing point of interconnection between the facilities of Transco, Tennessee and FGT in Calcasieu Parish, Louisiana. FGT states that it would receive said gas for DuPont and transport and deliver certain quantities to DuPont at an existing point of interconnection between the facilities of FGT and Longhorn in Jefferson County, Texas. Pursuant to the terms of a July 16, 1985, transportation agreement, FGT has agreed to transport said gas for DuPont from Calcasieu Parish, Louisiana, to Jefferson County, Texas.

FGT proposes to charge DuPont a facility charge of 12.6 cents for each million Btu of gas transported.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket No. CP85-798-000]

Take notice that on August 19, 1985, Great Lakes Gas Transmission Company (Applicant), 21000 Buhl Building, Detroit, Michigan, 48226, filed in Docket No. CP85-798-000 an application pursuant to 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of all gas received from TransCanada PipeLines Limited (TransCanada) at the Emerson, Manitoba, interconnection at a delivery pressure of 750 psig for an open-ended period as provided for in the amended agreement under the terms and conditions previously approved by the Commission, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that if the Commission issues an order in the instant docket with a termination date, then Great Lakes requests authorization for an additional five year term, ending on October 31, 1990.

It is stated that the Commission orders of July 1, 1975, as amended, in Docket Nos. CP66-110, CP70-100, CP70-19, CP71-222 and CP71-299 authorized initially the receipts of natural gas from TransCanada at a pressure of 750 psig. It is further stated that the Commission order of October 31, 1980 extended the initial authorization for a term of five years, which would terminate on October 31, 1985.

Applicant states that an analysis of the construction costs of constructing Applicant's own compression, shows that it would be economically advantageous to continue to pay TransCanada's compression charge rather than to install Applicant's own compression facilities.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Michigan Gas Storage Company

[Docket No. CP85-777-000]

Take notice that on August 13, 1985, Michigan Gas Storage Company (Gas Storage), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-777-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Clark Materials Systems Technology Company (Clark), under the certificate issued in Docket No. CP84-451-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Storage proposes to transport up to 1.0 billion Btu of natural gas per day on an interruptible basis for Clark for a term ending October 31, 1985. Gas Storage indicates that the gas to be transported would be purchased from Walls Energy and Gas Company, and that it would receive said volumes from Panhandle Eastern Pipe Line Company (Panhandle) for Clark's account at the inlet of Storage Company's Freedom compressor station. Gas Storage states it would transport said volumes through its station and redeliver thermally equivalent quantities of natural gas to Panhandle at the outlet of said compressor station. It is stated that Panhandle has agreed to transport certain volumes of natural gas to Battle Creek Gas Company (Battle Creek) for

Clark's account. It is further stated that Battle Creek would transport said volumes of gas to Clark to be used as fuel for space heating of its Battle Creek plant. Gas Storage commenced this transportation July 1, 1985, utilizing existing facilities, under the automatic authority of Section 157.209.

Gas Storage indicates that it would charge Clark 3.25 cents for each million Btu of natural gas transported which is in accordance with its Rate Schedule T-2.

Gas Storage also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Clark. The flexible authority requested is to apply only to points related to sources of gas supply, and not to delivery points in the market area. Gas Storage will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not increase those quantities.

Comment date: October 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-764-000]

Take notice that on August 7, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-764-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon and for a certificate of public convenience and necessity, respectively, permitting Applicant to reduce the currently authorized level of firm entitlement sold to Iowa Public Service Company (IPS) by 1,300 Mcf of natural gas per day, and authorizing Applicant to sell and deliver 1,300 Mcf of natural gas per day to the City of Rock Rapids, Iowa (Rock Rapids), a new municipal utility, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that natural gas service to the community of Rock Rapids, Iowa, is currently provided by IPS, the local distribution company. It is explained that the current level of firm entitlement assigned to Rock Rapids through IPS under Applicant's FERC Gas Tariff, Third Revised Volume No. 1, as approved on July 29, 1983, in Docket No. CP82-500-001 is as follows:

Community	Firm entitlement (Mcf per day)			
	CD	SS	WPS	Total
Rock Rapids, IA	900	60	45	1,005

Applicant further states that the citizens of Rock Rapids have elected to form a municipal utility, the City of Rock Rapids, Iowa, to provide natural gas service to its community, and to purchase the necessary local distribution facilities from IPS to accommodate such natural gas deliveries.

Applicant seeks authority to sell and deliver 1,300 Mcf of natural gas per day to the community of Rock Rapids and to reduce the currently authorized firm entitlement of IPS by the same volume. Applicant states that it is proposed that the 1,005 Mcf per day of firm entitlement currently sold to IPS for delivery to Rock Rapids be transferred from IPS to the new municipal utility. Applicant states that in order to meet the anticipated natural gas requirements of Rock Rapids, an additional 295 Mcf per day of firm entitlement currently assigned to Sioux City, Iowa, through IPS is required to be transferred to Rock Rapids.

Applicant states that it is estimated that Rock Rapids would use 1,800 Mcf of gas on a peak day and 175,000 Mcf on an annual basis during the first three years of service. Applicant also states that although Rock Rapids has only agreed to purchase 1,300 Mcf of gas per day of firm entitlement from Applicant, Rock Rapids has indicated to Applicant that requirements in excess of its authorized firm entitlement would be met through purchases of authorized overrun service from Applicant and utilization of the peak shaving facility located in Rock Rapids.

Applicant declares that since its authorized level of firm entitlement would be unchanged as a result of this proposal, it would have no impact on Applicant's peak day supply or annual deliveries. Applicant also states that no additional facilities are required to be constructed to accommodate the proposed natural gas deliveries.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation, United Gas Pipe Line Company

[Docket No. CP80-13-004]

Take notice that on August 5, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-13-004 a joint petition to amend the order issued February 20, 1980, in Docket No. CP80-13-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation and exchange of natural gas from additional sources of supply and additional delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued February 20, 1980, Petitioners were authorized to exchange up to 40,000 Mcf of natural gas per day pursuant to a gas exchange agreement dated August 31, 1979. It is stated that United delivers up to 40,000 Mcf of natural gas per day to Texas Eastern at an existing interconnection in West Cameron Block 506, offshore Louisiana. It is further stated that Texas Eastern redelivers thermally equivalent volumes, less fuel and losses and unaccounted for gas, to Trunkline Gas Company for United's account at existing onshore points of interconnection in Allen and/or Beauregard Parishes, Louisiana.

It is stated that United in return for such service utilizes a portion of its capacity in the pipeline system owned by Sea Robin Pipeline Company (Sea Robin) to transport up to 40,000 Mcf of gas per day for Texas Eastern. It is explained that United causes Sea Robin to accept such gas at the producers' platforms in Eugene Island Blocks 333 and 256, offshore Louisiana, and to redeliver equivalent volumes, less fuel and other uses, to Columbia Gas Transmission Corporation (Columbia Gas) for Texas Esatern's account at an existing point of interconnection at Erath, Louisiana.

Pursuant to an amendment to the transportation and exchange agreement dated December 2, 1980, Petitioners propose to establish an additional exchange point to United for gas purchased by Texas Eastern in Block 143, South Marsh Island Area, offshore Louisiana. It is stated that United causes Sea Robin to accept gas from Columbia Gulf Transmission Company (Columbia Gulf) which transports Texas Eastern's Block 143 gas to an interconnection with Sea Robin in South Marsh Island Block 127.

Pursuant to an amendment dated November 4, 1982, Petitioners propose to establish an additional exchange delivery point to United for gas purchased by Texas Eastern from East Cameron Block 336, offshore Louisiana. It is stated that Texas Eastern delivers and United causes Sea Robin to accept such gas at a delivery point on a

producer platform in East Cameron Block 335.

Pursuant to an amendment dated July 26, 1984, Petitioners propose three additional exchange delivery points between them. United proposes to deliver gas from West Cameron Block 253, offshore Louisiana, to a delivery point on Texas Eastern's offshore Cameron system in West Cameron Block 250. Texas Eastern proposes the delivery of natural gas produced in Eugene Island Blocks 181 and 182 to Sea Robin for the account of United at a point of delivery in Eugene Island Block 197, offshore Louisiana. It is further stated that Columbia Gulf would transport and deliver gas purchased by Texas Eastern in Eugene Island Block 312 from Eugene Island Block 313 "B" Platform to an exchange delivery point in Eugene Island Block 313 where United would cause Sea Robin to accept the gas.

It is asserted that deliveries of the new sources of gas at the additional delivery points would not increase the authorized exchange volumes of 40,000 Mcf per day.

Comment date: September 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation

Take notice that on August 7, 1985, Eastern Transmission Corporation (TETCO), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85-762-000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport quantities of fuel oil displacement gas for the B.F Goodrich Company (Goodrich), an eligible end-user, under the certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

TETCO states that the transportation service would be provided pursuant to a service agreement, dated May 30, 1985, wherein TETCO would transport volumes of fuel oil displacement gas for Goodrich. TETCO is advised that Goodrich has entered into a gas purchase agreement with Texas Eastern Gas Trading Company, for the purchase of volumes of natural gas. TETCO states that on June 8, 1985, it commenced a transportation service, for the account of Goodrich, for an initial automatic period of 120 days and subject to Commission authorization has agreed to provide transportation until October 31, 1985.

It is explained that pursuant to the service agreement, TETCO would take receipt of up to 3,600 dt equivalent of natural gas per day, for the account of Goodrich, at an existing interconnection with United Gas Pipe Line Company at TETCO's metering and regulating station No. 217 in Attala County, Mississippi, and at an existing interconnection with Valero Transmission Company at metering and regulating station No. 2448 in La Vaca County, Texas. TETCO states it would then transport and deliver such volumes of natural gas, less applicable shrinkage, to Philadelphia Electric Company (Philadelphia) for the account of Goodrich, at existing points of interconnection between TETCO and Philadelphia designated as TETCO metering and regulating stations Nos. 033 and 125, located in Chester and Montgomery Counties, Pennsylvania, respectively. Philadelphia would then transport and redeliver such volumes of natural gas to Goodrich at its Oaks, Pennsylvania, plant, it is said.

TETCO advises that Philadelphia has sufficient capacity to perform the transportation service without detriment to its other customers. TETCO indicates that no facilities need be constructed to provide the transportation serivce. TETCO has also submitted an affidavit from Goodrich indicating that the quantities of natural gas transported would be utilized for fuel oil displacement. The end-use of natural gas at Goodrich's plant would be 85 percent boiler fuel and 15 percent fabric treating, it is asserted.

TETCO proposes to charge Goodrich its currently effective TS-2 (fuel oil displacement) transportation rate. It is explained that for volumes of natural gas received at TETCO's M&R Station 217, TETCO would reduce the volumes received by 3 percent for fuel and losses and charge Goodrich 33.84 cents per dt equivalent of gas transported and for quantities received at TETCO's M&R Station 2248, TETCO would reduce the volumes received by 4 percent and charge Goodrich 67.00 cents per dt equivalent of gas transported. TETCO states that it would also charge Goodrich a Gas Research Institute Surcharge of 1.21 cent per dt equivalent for all gas transported for Goodrich.

TETCO also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. TETCO will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 15, 1985, in accordance with Stnadard Paragraph G at the end of this notice.

7. Texas Eastern Transmission Corporation

[Docket No. CP85-763-000]

Take notice that on August 7, 1985, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP85-763-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of A.E. Staley Manufacturing Company (Staley), under the certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 6,000 dt equivalent of natural gas per day for Staley from an existing interconnection with Westchester Gas Company, designated as Applicant's M&R Station 2163 in Harrison County, Texas, for delivery to Philadelphia Electric Company (Philadelphia), for the account of Staley, at existing points of interconnection between Applicant and Philadelphia, designated as Applicant's M&R Station 033 and M&R Station 125 in Chester and Montgomery Counties, Pennsylvania, respectivley. Philadelphia would then transport and redeliver the gas to Staley at its Morrisville, Pennsylvania, plant for fuel oil displacement.

Applicant estimates peak day and average day transportation quantities of 6,000 dt and 4,500 dt, respectively, and total annual quantities 1,642,500 dt.

Applicant indicates that no facilities need be constructed to provide the transportation service.

Applicant proposes to charge Staley its TS-2 (fuel oil displacement) transportation rate of 67.00¢ per dt transported for Staley and retain 4% for fuel and losses. Applicant would also charge Staley a Gas Research Institute surcharge of 1.21¢ per dt transported.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Staley. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area.

Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation Columbia Gulf Transmission Company

[Docket No. CP85-750-000]

Take notice that on August 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (Applicants), filed in Docket No. CP85-750-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that both Transco and Columbia Gas Transmission Corporation (Columbia Gas), an affiliate of Columbia Gulf, purchase gas from South Lake Arthur wells (McDonell Estate well No. 1 and the State Lease 7712 well Nos. 1, 3, and 4 located in the South Lake Arthur field, Vermilion Parish, Louisiana). It is explained that some of the South Lake Arthur wells are connected to Transco's Lake Arthur lateral and that the remaining South Lake Arthur wells are connected to Transco's Lake Arthur lateral and that the remaining South Lake Arthur wells are connected to the Columbia Gulf system. It is stated that pursuant to the terms of a gas exchange agreement between them dated December 31, 1981 (the exchange agreement), as amended October 3, 1983, and July 14, 1984, Transco has agreed to receive for the account of Columbia Gulf at the point where gas enters Transco's system in the South Lake Arthur field, and Columbia Gulf has agreed to receive for the account of Transco at the point where gas enters Columbia Gulf's system in the South Lake Arthur field, quantities of gas up to a maximum of 25,000 Mcf per day.

Applicants state that they intend the quantities of gas received at South Lake Arthur field receipt points to be approximately equal. It is explained that the exchange agreement, as amended, provides that any imbalances in the quantities of natural gas received at the receipt points would be delivered by the owing party's delivering, or causing to be delivered, quantities of gas at the existing interconnections between Transco and Columbia Gulf located (1) in Terrebonne Parish, Louisiana, (2) at the outlet of Conoco Inc.'s Acadia plant in Acadia Parish, Louisiana, and (3) at any other mutually agreeable points. Applicants state that neither Transco nor Columbia Gulf shall charge a rate for providing the exchange service or for delivering any imbalance quantities as provided by the exchange agreement, as amended.

Comment date: September 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21410 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-652-000, et al.]

William T. White, III, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. William T. White III August 29, 1985.

[Docket No. QF85-652-000]

On August 14, 1985, William T. White III (Applicant), of P.O. Box 1537, Kamuela, Hawaii 96743 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 17 kilowatt wind facility is located in Kamuela, Hawaii.

2. Starrett City, Inc.

[Docket No. QF85-654-000]

August 29, 1985.

On August 16, 1985, Starrett City, Inc., (Applicant), of 1310 Pennsylvania Ave., Brooklyn, New York 11239 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Starrett City Power Plant, 165 Elmira Loop, Brooklyn, New York 11239. The facility will

contain four (4) steam boilers, two (2) steam turbine generators, three (3) dual fuel engine generators equipped with exhaust heat recovery boilers (HRB). The exhaust steam from the turbine and the HRB is used in the City's steam distribution system for space and water heating and also in the absorption chillers for air conditioning. The primary energy source is natural gas with the distillate oil as alternate fuel. The power production capacity of the facility is 16,000 kW. The facility has been in operation since 1974.

3. Pacific Lighting Energy Systems

[Docket No. QF85-645-000]

August 27, 1985.

On August 12, 1985, Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in the district of Ewa, on the island of Oahu, in the state of Hawaii. The facility will consist of combustion turbine/generator units or internal combustion engine/generator units fueled by landfill gas, generated from the anaerobic digestion of refuse and other solid waste deposited in a sanitary landfill. The electric power production capacity of the facility will be approximately 1,700 kW. The primary source of energy will be biomass in the form of biomethane. The use of either gas, oil or coal is not anticipated.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21411 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-21-000]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

August 30, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated), on August 26, 1985, tendered for filing the following proposed changes in its FERC Gas Tariff Original Volume No. 2 and 3, to be effective September 27, 1985:

Volume No. 2: First Revised Sheet No. 4 Superseding Original Sheet No. 4; Original Sheet Nos. 5, 631, and 631A.

Volume No. 3: First Revised Sheet No. 1 Superseding Original Sheet No. 1.

First Revised Sheet No. 4 and Original Sheet No. 5 to Volume No. 2 contain a part of the Table of Contents to Volume No. 2 and are being filed to reflect the addition of Rate Schedules X-49 through X-57 to Volume No. 2.

Original Sheet No. 631 is the title page to Rate Schedule X-50 and was inadvertently omitted when the rate schedule was filed. Original Sheet No. 631A is being filed as a result of repaginating the pages of Rate Schedule X-50 to allow for Original Sheet No. 631.

First Revised Sheet No. 1 to Volume No. 3 contains the Table of Contents to Volume 3 and is being filed to reflect cancellation of Rate Schedules F-3, F-4, F-5.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21399 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-190-000]

Proposed changes in FERC Gas Tariff; Panhandle Eastern Pipe Line Co.

August 30, 1985.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 23, 1985 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Ninth Revised Sheet Nos. 694, 965, 875, and 876
Tenth Revised Sheet Nos. 694, 695, 875, and 876
Third Revised Sheet Nos. 2049 and 2242
Fourth Revised Sheet Nos. 2049 and 2242
First Revised Sheet Nos. 2672 and 2731
Second Revised Sheet No. 2672.

Panhandle proposes that Ninth Revised Sheet Nos. 694, 695, 875 and 876; Third Revised Sheet Nos. 2049 and 2242; and First Revised Sheet No. 2672 become effective December 1, 1983. Panhandle proposes that Tenth Revised Sheet Nos. 694, 695, 875, and 876; Fourth Revised Sheet Nos. 2049 and 2242; Second Revised Sheet No. 2672; and First Revised Sheet No. 2731 become effective March 1, 1985.

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Truckline Gas Company's current transportation rates as approved in Docket No. RP83-93 by Commission's Orders dated December 2, 1983 and April 10, 1985 to be effective December 1, 1983 and March 1, 1985, respectively.

A copy of this filing has been served on transport customers.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21401 Filed 9-6-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2893-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

Title: Laboratory Performance Evaluation of Water and Waste Laboratories (ICR #0234). (This is an extension of an established collection.)

Abstract: National Pollution Discharge Elimination System (NPDES) laboratories and state laboratories are tested to determine if the quality of their analyses is high enough for monitoring water. The results of these tests demonstrate whether the labs are capable of producing valid data.

Respondents: NPDES and state laboratories.

Office of Pesticides and Toxic Substances

Title: National Human Blood Network—Pilot Survey (ICR #1201). (This is a request for a new collection.)

Abstract: Volunteer blood donors will be asked to provide demographic and occupational information, together with data on residence characteristics, lifestyle, and diet. Taken together with a chemical analysis of the blood specimens, this information would be used to identify those segments of the population at risk from exposure to toxic substances, as well as potential exposure routes and sources. Such results would be used to support regulation action where appropriate.

Respondents: Voluntary blood donors who alredy have come to the blood center to donate blood.

Agency PRA Clearance Requests Completed by OMB

EPA #1084, New Source Performance Standards for Non-Metallic Mineral Processing Plants (SAR No. 1880), was approved 7/30/85 (OMB #2060-0050; expires 7/31/88).

EPA #1200, Surveys of Household Exposure to Common Chemical Products was approved 5/19/85 (OMB #2070-0068; expires 9/30/87).

EPA #1251, Information Requirements for Advanced Treatment Performance Standards, was approved 8/20/85 (OMB #2040-0099; expires 8/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460.

Rick Otis (ICR 0234) or Carlos Tellez (ICR 1201), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: August 30, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Division.

[FR Doc. 85-21489 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59204; FRL-2894-6]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 24, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59204]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-64

Close of Review Period. October 10, 1985.

Manufacture. Confidential.

Chemical. (G) Substituted phenoxy alkyl acid ester.

Use Production. (G) Confidential. Destructive use intermediate. Prod. range: 2,700 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 6 workers, up to 1.0 hr/da.

Environmental Release/Disposal. 0.5 kg/batch released. Disposal by incineration and Resource Conservation and Recovery Act (RCRA) approved site.

T 85-65

Close of Review Period. October 11, 1985.

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified lignosulfonic acid sodium salt.

Use Production. (G) A fluid loss additive. Prod. range. Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture and use: Dermal, a total of 25 workers.

Environmental Release/Disposal. No release.

T 85-66

Close of Review Period. October 11, 1985.

Manufacturer. Confidential.

Chemical. (G) Ethylene vinyl fatty ester co-polymer.

Use Production. (G) Consumptive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-21438 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140067; FRL 2894-4]

Access to Confidential Business Information by Two Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will provide its contractors, Delliotte, Haskins, and Sells (DHS), of Washington, D.C., and Dynatrend, Inc. (Dynatrend), of Arlington, VA, with access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under these contracts will take place no sooner than September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has selected two contractors to perform work to support its activities relating to securing information claimed as confidential under TSCA. In accordance with 40 CFR 2.306(j), EPA has determined that its contractors, DHS and Dynatrend, may require access to confidential business information submitted to EPA under TSCA to perform work on the two contracts described in the following paragraphs. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide access to TSCA CBI to these contractors on a need-to-know basis.

Contract No. 68-02-4231 provides that DHS, 1101 15th Street, NW., Washington, D.C. will assess the effectiveness of safeguards used by EPA to protect CBI stored on the TSCA CBI computer, which is located at the National Computer Center in Raleigh, North Carolina, and of the mechanisms used by EPA to communicate between the computer and EPA Headquarters. DHS will also evaluate security aspects of software development by EPA's Office of Toxic Substances for the TSCA CBI computer. Under this contract DHS employees will be authorized for TSCA CBI computer access and will be given access to all information on the TSCA CBI computer, which includes information collected under all reporting provisions of TSCA. Such TSCA CBI access by DHS employees will be incidental to their evaluation of the security systems and will be non-substantive. All access to TSCA CBI under this contract will take place at either EPA Headquarters or the National Computer Center. Clearance for access to TSCA CBI under this contract is scheduled to expire on June 30, 1986.

Under Contract No. 68-01-6927, Dynatrend, of 1911 N. Ft. Meyer Drive, Arlington, VA, will install, operate, and maintain the electronic card entry systems that guard TSCA CBI secured storage areas. In order to perform these duties, Dynatrend employees will require authorization for access to secured storage areas containing TSCA CBI collected under all reporting provisions of TSCA. Any actual access to TSCA CBI by Dynatrend employees will be incidental and non-substantive. All access to TSCA CBI under this contract will take place at EPA Headquarters. Clearance for access to TSCA CBI under this contract is scheduled to expire on Septmeber 15, 1986.

DHS and Dynatrend have been authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Contractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 30, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-21488 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-2893-4]

Region 6; Approval of PSD Permits, Extension of PSD Permits, and Rescission of a PSD Permit

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-76M-3—Sohio Chemical Company: Green Lake Chemical Plant located approximately 18 miles southeast of Victoria, Victoria County, Texas. PSD-TX-76M-3 modifies PSD-TX-76M-2 to make the permitted emission rates and PSD permit conditions consistent with the corresponding Texas Air Control Board permit (C-6289). This modified permit was issued on April 17, 1985.

2. PSD-LA-326S-1—BF Goodrich Company: Convent Chemical Corporation located on State Highway 14, approximately 3 miles northwest of Convent, St. James Parish, Louisiana. PSD-LA-326S-1 modifies PSD-LA-326 to replace the coal boiler and bunkerhouse with a natural gas fired cogeneration system. This modified permit was issued on April 18, 1985.

3. PSD-TX-649—Amoco Oil Company: This permit issued on April 24, 1985, authorizes the construction of a steam generation facility at the existing refinery located at 2401 Fifth Avenue, Texas City, Galveston County, Texas.

4. PSD-TX-653—Champlin Petroleum Company: This permit, issued on April 26, 1985, authorizes the increase of the capacity of the No. 2 fluidized catalytic cracking unit at the existing refinery located at 1801 Nueces Bay Boulevard, Corpus Christi, Nueces County, Texas.

5. PSD-LA-531—Crown Zellerbach Corporation: This permit, issued on May 29, 1985, authorizes the construction of a gas turbine cogeneration system at the existing pulp and paper mill located approximately five miles southwest of St. Francisville, West Feliciana Parish, Louisiana.

6. PSD-LA-520—PPG Industries, Inc.: This permit, issued on June 10, 1985, authorizes the construction of a cogeneration facility at the existing chemical plant located on Columbus Southern Road adjacent to Interstate Highways 10 and 210 in Lake Charles, Calcasieu Parish, Louisiana.

7. PSD-TX-486M-1—Lower Colorado River Authority: PSD-TX-486M-1 modifies PSD-TX-486 to authorize design refinement for the lignite, limestone and ash handling systems, and the increase of the material handling requirements for the Fayette

Power Project No. 4 located approximately seven miles east of LaGrange, Fayette County, Texas. This modified permit was issued on June 11, 1985.

8. PSD–TX–047M–1—Texas Utilities Generating Company: Oak Knoll Steam Electric Generating Station located near Kosse, Limestone County, Texas. PSD–TX–047M–1 modifies PSD–TX–047 to reflect changes in the Standards of Performance for New Stationary Sources for Fossil-Fuel-Fired Generators since the original issuance of the permit. This modified permit was issued on June 13, 1985.

9. PSD–TX–630M–1—Amoco Production Company: Slaughter Gas Plant located on Highway 301, approximately 4 miles west of Sundance, Hockley County, Texas. PSD–TX–630M–1 modifies PSD–TX–630 to: (1) Increase the allowable NO_x and CO emissions for the turbine because preliminary performance testing demonstrated that the manufacturer's emission estimates were too low; and (2) to allow continuous pilot burning in the two 48 MMBtu/hr heaters so that a smooth and quick start of full rate firing can be accomplished when the turbine goes down. This modified permit was issued on June 20, 1985.

10. PSD–TX–626—Delhi Gas Pipeline Corporation: This permit, issued on June 21, 1985, authorizes the temporary shut-down of the Claus sulfur recovery unit at the existing amine sweetening plant located approximately four miles southeast of Teague, Freestone County, Texas.

11. PSD–TX–648—Air Products Manufacturing Corporation: This permit, issued on June 24, 1985, authorizes the construction of a natural gas fired cogeneration unit at the existing chemical plant located at 412 Davison Road in Pasadena, Harris County, Texas.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD–TX–464M–1—Warren Petroleum Company: This modified permit was issued on June 20, 1984, authorizing the increase of the allowable emissions of NO_x from 11.02 lb/hr at 1000 hp to 16.3 lb/hr for each engine based on stack sampling. The original permit, PSD–TX–464, issued on August 5, 1982, authorized the addition of six residue gas compressors to the existing Sandhills gas processing plant located approximately 2.7 miles northwest of Crane, Crane County, Texas.

The company requested a extension because they have delayed construction of the sixth compressor engine due to contract negotiations with gas producers. The extension was granted on May 2, 1985, to a new expiration date of June 30, 1986.

2. PSD–TX–047—Texas Utilities Company: This permit was issued on February 9, 1978, for the construction of two 750 megawatt lignite-fired electric generating units located approximately 10 miles east of Kosse, Limestone County, Texas. The company suspended construction on March 23, 1983, because of financial limitations and less than anticipated system electric load growth. The extension was granted on June 13, 1985, to a new expiration date of March 24, 1986.

3. PSD–TX–480—Central Power and Light Company: This permit as issued on September 2, 1983, for the construction of two 70 megawatt natural gas/distillate fuel fired gas turbines for peaking purposes at the existing J. L. Bates Power Station located approximately three miles east of Penitas, Hidalgo County, Texas. Construction has not commenced due to changes in load growth projection and financial considerations which have resulted in schedule modifications. The extension was granted on May 6, 1985, to a new expiration date of September 2, 1986.

4. PSD–TX–481—Central Power and Light Company: This permit was issued on October 12, 1983, for the construction of two 70 megawatt natural gas/distillate fuel fired gas turbines for peaking purposes at the existing Laredo Power Station located approximately 3.3. miles north of Laredo, Webb County, Texas. Construction has not commenced due to changes in the load growth projections and financial considerations. The extension was granted on May 6, 1985, to a new expiration date of October 12, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

Notice is hereby given that the Environmental Protection Agency (EPA) Region 6, rescinded the following Prevention of Significant Deterioration (PSD) permit:

1. PSD–TX–450—Pogo Producing Company: The permit was issued on January 18, 1982, for the construction of a gas sweetening plant to be located approximately 14.5 miles southeast of Canadian, Hemphill County, Texas. This source no longer constitutes a major stationary source since, under the new definition of "potential to emit", contained in 40 CFR 52.21 of the amended PSD regulations published in the **Federal Register** on August 7, 1980, the controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit was no longer required for this facility and rescinded the permit on June 20, 1985.

A notice of EPA's proposed action to extend/rescind the PSD permits was published in a newspaper in the affected area of the facility.

For Further Information Contact: Donna Ascenzi at (214) 767–1594.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirments which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of executive Order 12291.

Dated: August 26, 1985.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 85–21490 File 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00214; FRL-2894-1]

FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a meeting of a subpanel of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) which was convened by the Agency to provide a comparative study of the merits and/or deficiencies of the AOAC Tuberculocidal Activity Test and a new quantiative test method which has been recommended to the Agency as an alternative means of establishing the tuberculocidal efficacy of disinfectant products. The subpanel meeting will be chaired by SAP member, Dr. Wendell Kilgore.

DATE: The meeting will be held Monday, September 30, 1985, from 9 a.m. until mid-afternoon.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1117, Crystal Mall, Building #2, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: The AOAC Tuberculocidal Activity Test is used to support claims of efficacy against tuberculosis organisms on inanimate surfaces for disinfectant products proposed for registration under the FIFRA. The AOAC test has been in use for approximately 20 years. In recent years it has been observed that the results of the AOAC test can vary inexplicably and that therefore disinfectant label claims which result from its use may not be sufficiently stringent to protect public health.

In August 1983, Surgikos, Inc., a registrant of disinfectant products submitted to the EPA a new quantitative test method for establishing tuberculocidal efficacy claims for glutaraldehyde-based disinfectant products. Thus far, the new method has been used only to assess the efficacy of glutaraldehyde-based products. The Agency is considering whether this new test method may become an optional alternative or possible replacement to the AOAC Tuberculocidal Activity Test for all disinfectant products intended to control tuberculosis organisms.

The Agency is permitting use of this new method by registrants of glutaraldehyde-based products to support tuberculocidal efficacy claims if: (1) The AOAC Tuberculocidal Activity Test has already been relied upon successfully; and (2) use of the new method results in use directions which are more stringent, such as longer contact time and higher temperature. Before the Agency can accept the new method as a scientifically valid method for generating data that could be used alone to support a tuberculocidal efficacy claim, it must undergo independent peer review. A subpanel of the FIFRA SAP reviewed the new method in the fall of 1984 and observed that it may have scientific merit, but raised several questions which the Agency believes require additional examination. Therefore, the Agency announced in the **Federal Register** of June 19, 1985 (50 FR 25487) that it was initiating a more comprehensive, comparative peer review of tuberculocidal efficacy test methods under the auspices of a subpanel of the SAP. That notice solicited recommendations for the composition of the subpanel.

The Agency received responses to this notice from the American Society for Microbiology, the Chemical Specialties Manufacturers Association, the American Dental Association, Surgikos, Inc., the Sporocidin Company, and Wave Energy Systems, Inc. The comments recommended a total of 13 microbiologists with expertise in conducting tuberculocidal efficacy studies and/or hospital disinfection and sterilization procedures. Based on these recommendations, the Agency has selected the following individuals to serve on the subpanel:

1. Dr. Frederick J. Marsik, Associate Professor of Microbiology and Internal Medicine, Oral Roberts University School of Medicine, Tulsa, Oklahoma.
2. Mr. Gayle Mulberry, General Manager and Technical Director, Microbiological Services Division, Hill Top Research, Inc., Cincinnati, Ohio.
3. Dr. Herbert Prince, Director, Gibraltar Biological Laboratories, Fairfield, New Jersey.
4. Dr. Martin S. Favero, Chief, Nosocomial Infections Laboratory Branch, Hospital Infection Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia.
5. Ms. Anne Reeves, Hazelton Laboratories, Vienna, Virginia.
6. Mr. Donald K. Stamm, Immunosystems, Inc., Rialto, California.

The Agency has provided the subpanel with copies of both the AOAC Tuberculocidal Activity Test and the proposed new method, and representative data developed using both test methods. The subpanel members have been asked to address the following specific questions:

1. This question is intended to elicit specific information based on your practical experience in conducting the AOAC Tuberculocidal Activity Test with the following classes of antimicrobial chemicals: glutaraldehyde, substituted phenols, iodophors, chlorine and chlorine-releasing chemicals, or other chemicals.

(a) With which specific antimicrobial chemical classes have you conducted the AOAC Tuberculocidal Test?

(b) In conducting the AOAC test, did you routinely, or ever, perform the presumptive Part I of the test to determine the use dilution to be confirmed by Part II of the AOAC test? If not, how did you determine the use dilution?

(c) Did you obtain relatively consistent results if you repeated the AOAC test on the same chemical samples? Did you note any marked differences in consistency of results with individual classes of antimicrobial chemicals?

(d) Did you encounter problems with phenol resistance or the controls used, or observe any differences in the proper function of the recovery media among various classes of chemicals?

2. Do you have experience in using the proposed new protocol to conduct tuberculocidal efficacy testing with any of the antimicrobial chemical classes listed in question 1? If so, with which classes of chemicals have you conducted the test and did you observe any problems during the conduct of the test?

3. The proposed test determines the specific contact time (potentially longer than the 10 minutes specified in the AOAC test) for tuberculocidal activity of each individual disinfectant solution at any desired temperature (potentially higher than the 20°C specified in the AOAC test). Thus, differing contact times and temperatures may appear on labels of products bearing tuberculocidal claims supported by data derived by the proposed test. The AOAC test determines the tuberculocial activity of all disinfectant solutions at one given temperature (20°C) and contact time (10 minutes), which corresponds to the use conditions

recommended for disinfection (bactericidal, fungicidal and virucidal efficacy).

(a) Are there specific merits or drawbacks of conducting the test at constant, but arbitrary, contact times and temperatures? Similarly, what are the merits or drawbacks of varying the contact times and temperatures to provide use conditions where a given product will be tuberculocidal?

(b) Should the use of the AOAC Tuberculocidal Test be modified to permit testing at any time and temperature? Should it be modified specifically for glutaraldehyde-based products on the basis of the results of studies employing the proposed test protocol?

4. If used by manufacturers, could either method have a positive impact on the quality control aspects of manufacturing these disinfectant products by virtue of their potential ability to monitor and evaluate product performance variables?

5. Based on your experience with the AOAC Tuberculocidal Activity Test and the proposed new test method, is either test as currently constituted an adeugate means of evaluating tuberculocidal efficacy of all chemical disinfectants intended to control *Mycobacterium tuberculosis?*

6. Based on your comparative study of the two test protocols, could the proposed test be used as a scientifically acceptable replacement for the AOAC test, and if so, under what circumstances? Alternatively, could the proposed new test be used as a presumptive test followed by confirmation with the AOAC test, or vice versa? Based on your experience, can you recommend another possible approach?

Copies of documents relating to this peer review process may be obtained by contacting:

By mail:
Carole V. Gray, Policy and Special Projects Office (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number:
Rm. 1109B, Crystal Mall Building # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7102).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or telephone number given above. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements should focus on the specific questions under consideration by the subpanel. They will be made part of the record and will be taken into consideration by the subpanel in formulating comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than September 18, 1985, in order to ensure appropriate consideration by the subpanel.

Dated: August 29, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-21486 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51587; FRL-2894-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1386, 85-1387, 85-1388, 85-1389, 85-1390 and 85-1391—November 20, 1985.
P 85-1392—November 23, 1985.
P 85-1393—November 24, 1985.
P 85-1394, 85-1395, 85-1396, 85-1397, 85-1398, 85-1399, 85-1400, 85-1401, 85-1402, 85-1403, 85-1404 and 85-1405—November 25, 1985.
P 85-1406—November 26, 1985.

Written comments by:

P 85-1386, 85-1387, 85-1388, 85-1389, 85-1390 and 85-1391—October 21, 1985.
P 85-1392—October 24, 1985.
P 85-1393—October 25, 1985.
P 85-1394, 85-1395, 85-1396, 85-1397, 85-1398, 85-1399, 85-1400, 85-1401, 85-1402, 85-1403, 85-1404 and 85-1405—October 26, 1985.
P 85-1406—October 27, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51587]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1386

Manufacturer. Borg-Warner Chemicals, Inc.

Chemical. (S) Polymer of styrene, acrylonitrile and maleic anhydride.

Use/Production. (S) Site-limited and industrial component in polymer alloys commonly used in general thermoplastic applications and by itself or with inert fillers such as automotive and electronic parts and glass fillers requiring impact stength, modulus, heat resistance and clarity. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 20 workers, up to 8 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. Less than 1 kg/da devolatized. Disposal by landfill and incineration.

P 85-1387

Manufacturer. PMC Specialties Group, Inc.

Chemical. (G) Carboxy substituted aromatic sulfonamide.

Use/Production. (G) Intermediate organic chemical which is processed further by our customer to form a patented product. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 9 workers, up to 2 hrs/da, up to 160 da/yr.

Environmental Release/Disposal. Release to water. Disposal by publicly owned treatment works (POTW).

P 85-1388

Manufacturer. Confidential.

Chemical. (G) Vinyl chloride-vinyl acetate hydroxyl modified copolymer.

Use/Production. (S) Component of industrial coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1389

Manufacturer. Confidential.

Chemical. (G) Fluoro polyaryl ether ketone.

Use/Production. (S) Intermediate for manufacture of polymers. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1390

Importer. Confidential.

Chemical. (G) (Dialkyl-substitutedhydroxyphenyl)benzotriazole.

Use/Import. (G) (a) Contained use; additive for paper. (b) Open, non-dispersive use; additive for coatings. (c) Contained use; additive for polymers. Import range. Confidential.

Toxicity Data. Acute oral—>5.0 g/kg; Acute dermal—>2.0 g/kg; Irritation: Skin—Minimal; Eye—Minimal; Ames test: Negative.

Exposure. Processing: Dermal, up to 1 to 2 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. No release to air, water or land. Disposal by incineration.

P 85–1391

Importer. Confidential.

Chemical. (S) 4-isopropyl thioxanthone.

Use/Import. (S) Photo initiator (ultra violet curing agent). Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–1392

Manufacturer. Confidential.

Chemical. (G) Zinc salt of a carboxy substituted aromatic sulfonamide.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral: Male—<5.0 g/kg, female—>5.0 g/kg; Skin: Non-irritant; Eye: Severe; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1393

Manufacturer. Confidential.

Chemical. (G) Polymer of bisanhydride of Bisphenol-A, and an aromatic diamine.

Use/Production. (S) Transportation for industrial, commercial and consumer use. Prod. range. 20,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 24 workers, up to 4 hrs/da, up to 90 da/yr.

Environmental Release/Disposal. 2 to 6 kg/batch released to land. Disposal by approved Resource Conservation and Recovery Act (RCRA) approved disposal firm.

P 85–1394

Manufacturer. Confidential.

Chemical. (G) Benzenamine, N,N'-(1,4-phenylenedimethylidyne)bis[3-ethynyl].

Use/Production. (S) Industrial monomer for the production of conducting polymers and for the manufacture of fiber reinforced composites. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1395

Manufacturer. Rohm and Haas Company.

Chemical. (G) Functionalized polyacrylic acid derivative.

Use/Production. (S) Industrial, commerical, and consumer dispersant for pigment slurries, trade sales, caulks, industrial coatings, adhesives, and roof mastics. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 8 workers.

Environmental Release/Disposal. Release to water. Disposal by POTW and navigable waterway.

P 85–1396

Importer. Toyo Soda USA, Inc.

Chemical. (S) Copolymer of 2-hydroxyethylmethacrylate and sodium styrenesulfonate.

Use/Import. (S) Consumer binder for stationery and leather inks. Import range. 1,000 to 10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No release to air and water.

P 85–1397

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer latex.

Use/Production. (S) General purpose coating, modifier for inks, coatings and adhesives for industrial, commerical and consumer use. Prod. range. 300,000 to 1,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 2 hrs/da, up to 35 da/yr.

Environmental Release/Disposal. No release.

P 85–1398

Importer. Confidential.

Chemical. (G) Aliphatic polyurethane aqueous dispersion.

Use/Production. (S) General purpose coating and modifier for coatings and inks. Import range. 50,000 to 300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. Confidential.

P 85–1399

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo benenesulfonic acid.

Use/Production. (S) Site-limited dye intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1400

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenylazo disubstituted naphthalenesulfonic acid, salt.

Use/Production. (G) Site-limited isolated intermediate. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85–1401

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkyl amine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1402

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo disubstituted naphthalenesulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-1403

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkylamine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-1404

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted phenylazo benzenesulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85-1405

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted phenylazo benenesulfonic acid, comp. with substituted alkylamine.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-1406

Importer. Confidential.

Chemical. (G) Substituted aryl-substituted aryl heterocycle, carboxylate salt.

Use/Production. (S) Industrial optical brightener for textiles Import range. Confidential.

Toxicity Data. Acute oral—5.9 ml/kg; Irritation: Skin—Non-irritant; Eye—Severe; IC_{50} (Pseudo. fluorescence): <100 mg/L; LC_0 (Branchydanio reio): 6.0 mg/L; LC_{50} (Branchydanio rerio): 5.5 mg/L.

Exposure. Processing and use: Dermal.

Environmental Release/Disposal. No release to air, land or water.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-21437 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59730; FRL-2894-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-141—September 12, 1985.

Y 85-142, 85-143 and 85-144—September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-141

Manufacturer. Confidential.

Chemical. (G) Polymer from coconut fatty acids with alkanedioic acids and an alkanediol.

Use/Production. (G) Polymer for industrially used coatings having an open use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85-142

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings and inks. Prod. range. 50,000-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No Release.

Y 85-143

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic acid, sulfonated carbomonocyclic ester and alkylene glycol.

Use/Production. (G) Polymer for use as textile fiber. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85-144

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic ester, sulfonated carbomonocyclic ester and alkylene glycol.

Use/Production. (G) Polymer for use as textile fiber. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: September 3, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-21439 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 30, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0185
Title: Section 73.3613, Filing of Contracts
Action: Revision
Respondents: Licensees of television and radio stations
Estimated Annual Burden: 7,075 Responses; 3,538 Recordkeepers; 5,759 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–21415 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Radio Advisory Committee, Meeting

September 26, 1985.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 1:30 p.m., Thursday, September 26, 1985, in Room 330, 1200 19th Street, NW., Washington, DC.

The Committee will:

—Receive aural reports by the Chairmen of the Committee's Technical and Allocations Subgroups concerning proposals for the 1986 AM Expanded Band Conference and act upon the transmittal to the Commission of written reports concerning preparations for that Conference;
—Note the status of negotiations on revisions of international agreements, principally the AM Agreement with Mexico and the FM Agreement with Canada;
—Note recent actions relating to nighttime operation on the Canadian clear channels; and
—Take up other business raised by participants.

The meetings of the Committee are public and are open for participation by all interested persons. The meeting scheduled for September 26, 1985 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please consult the Committee Chairman, Louis C. Stephens, at FCC Headquarters. Tel.: (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–21416 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Broadcast Data Corp.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85–270; Broadcast Data Corp., File No. 10289–CM–P–80; and Kravetz Media Corporation, File No. 11608–CM–P–80; and Telecommunications Systems, Inc., File No. 50015–CM–P–81; For Construction Permits in the Multipoint Distribution Service for a new station at Jonesboro, Arkansas.

Adopted August 23, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Jonesboro, Arkansas. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Broadcast Data Corp., Kravetz Media Corporation, Telecommunications Systems, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–21417 Filed 9–6–85; 8:45 am]

BILLING CODE 6712–01–M

Broadcast Data Corp.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85–271; BROADCAST DATA CORP., File No. 10298–CM–P–80; and TELECOMMUNICATIONS SYSTEMS, INC., File No. 50020–CM–P–81; For Construction Permits in the Multipoint Distribution Service for a new station at Clarksville, Tennessee.

Adopted August 28, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Clarksville, Tennessee. The applications are therefore mutually

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Broadcast Data Corp., Telecommunications Systems, Inc. and the Chief of Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-21418 Filed 9-6-85; 8:45 am]

BILLING CODE 6712-01-M

Digital Paging Systems, Inc.; Memorandum Opinion and Order

In re Applications of: CC Docket No. 85-272; DIGITAL PAGING SYSTEMS, INC., File No. 50089-CM-P-74; and INTRASTATE RADIO TELEPHONE INC., OF SAN FRANCISCO, File No. 50137-CM-P-74; and PRIVATE NETWORKS, INC., File No. 50179-CM-P-74; and ESTATE OF FRED A. NILES, File No. 50011-CM-P-75; and MULTIPOINT INFORMATION SYSTEMS, INC., File No. 50034-CM-P-75; and LINCOLN CLOSED-CIRCUIT, INC., File No. 50038-CM-P-75; For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at San Francisco, California.

Adopted August 28, 1985.
Released August 30, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at San Francisco, California. The applications are therefore mutually exclusive and require comparative consideration. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Intrastate Radio Telephone Inc. of San Francisco, Private Networks, Inc., Estate of Fred A. Niles, Multipoint Information Systems, Inc., Lincoln Closed-Circuit, Inc., and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

Without prejudice to reexamination and reconsideration of that company's qualifications to held an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-21419 Filed 9-6-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including San Francisco, California, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003099B–002
Title: New York Terminal Agreement
Parties:
The Port Authority of New York and New Jersey (Authority)
The City of New York (City)
The State of New York (State)
Synopsis: Agreement No. 224–003099B–002 amends the basic agreement by providing for a project for the Authority to expand the Red Hook Container Terminal in Brooklyn, New York, at an approximate cost of $14,500,000 to develop twenty-six additional acres consisting of Pier 9A and 9B, and upland, with the City providing an additional ten acres needed for further expansion of the terminal. The Authority will be responsible for the construction of the expanded terminal and the operation and maintenance thereof. Revenues from the expanded terminal will be used to pay operating and maintenance costs. The remaining net revenues will be divided equally between the city and the Authority. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–003368–002
Title: Palm Beach Terminal Agreement
Parties:
The Port of Palm Beach (Port)
Eastern Cement Corporation (Eastern)
Synopsis: Agreement No. 221–003368–002 modifies the basic agreement which provides for the lease by the Port to Eastern of premises within the Port of Long Beach for the purpose of bulk cement storage and the loading and discharging of Eastern's chartered vessels. The amendment gives to Eastern a certain additional parcel of vacant real property (3.1 acres) for the construction of a warehouse for handling and storage of general cargo and equipment.

Agreement No.: 224–003930–001
Title: New York Terminal Agreement
Parties:
The Port Authority of New York and New Jersey (Authority)
The City of New York (City)
Parties: L
The State of New York (State)
Synopsis: Agreement No. 224–003930–001 amends the basic agreement which provides for the rentals to be paid at the Red Hook Container Terminal in Brooklyn, New York. The amendment will increase the basic rental to $650,000 per annum, increase the Unit Rate per revenue ton to $2.80 and will extend the term of the agreement to twenty years. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–004027–002
Title: Palm Beach Terminal Agreement
Parties:
Port of Palm Beach District (Port)
Lund and Pullara, Inc. (L&P)
Synopsis: Agreement No. 221–004027–002 amends the basic agreement which provides for the lease by the Port to L&P, a foreign freight forwarder, of office space in the Port's Maritime Office Building at the Port. The modification provides L&P the option to lease 288 square feet of office space in the building. The term of the option is for two years.

Agreement No.: 224–010645–001
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Korea Shipping Corporation (KSC)
Synopsis: Agreement No. 224–010645–001 amends the basic agreement which grants the use of the container terminal located at Berths 87 through 90 in the Port of Los Angeles to KSC. The basic agreement was effective on November 2, 1984, and has a five-year term. The basic agreement requires KSC to submit documentation to the Port of Los Angeles showing all tariff charges accured within 15 days from the date of the departure of the vessel from the Port. The Port of Los Angeles tariff No. 3 requires that documentation in such a situation be submitted within 21 days after vessel leaves the Port. In order to maintain consistency between the tariff and the agreement, Agreement No. 224–010645–001 will amend the basic agreement by revising the time period to submit documentation to the Port so that the agreement provides the same number of days as the Port's tariff.

By Order of the Federal Maritime Commission.

Dated: September 4, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–21396 Filed 9–6–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amoskeag Bank Shares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of The Souhegan National Bank of Milford, Milford, New Hampshire.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Frankewing Bancshares, Inc.*, Frankewing, Tennessee; to become a

bank holding company by acquiring 100 percent of the voting shares of The Bank of Frankewing, Frankewing; Tennessee.

2. *Newton County Bancorporation, Inc.*, Newton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Newton County Bank, Newton, Mississippi.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Indiana National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of The Fidelity Bank of Indiana, Carmel, Indiana.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southside Bancshares Corp.*, St. Louis, Missouri; to acquire 80 percent of the voting shares of Bank of Ste. Genevieve, Ste. Genevieve, Missouri.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Burns Bankshares, Inc.*, Burns, Kansas; to become a bank holding company by acquiring 95 percent of the voting shares of Burns State Bank, Burns, Kansas.

Board of Governors of the Federal Reserve System, September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21391 Filed 9-6-85; 8:45 am]

BILLING CODE 6210-01-M

Policy Statement Regarding National Security Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amended Policy Statement.

SUMMARY: This policy statement, implementing Executive Order 12356, 47 FR 14,874 (1982), and the Information Security Oversight Office Directive, 47 FR 2837 (1982), relates to the classification, downgrading, declassification and safeguarding of national security information. It updates a previous policy statement on this subject.

EFFECTIVE DATE: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Robert E. Frazier, Director, Division of Support Services, (202) 452-3816 or Joy W. O'Connell, Telecommunication Device for the Deaf, (202) 452-3244, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Policy Statement Regarding National Security Information

I. Policy

The national security information policy of the Board of Governors of the Federal Reserve System shall be consistent with Executive Order 12356, 47 FR 14,874 (1982), and the Information Security Oversight Office (ISOO) Directive, 47 FR 2837 (1982), relating to the classification, downgrading, declassification, and safeguarding of national security information.

The policy governs the processing of national security information, which means information that has been determined pursuant to Executive Order 12356 or any predecessor executive order to require protection against unauthorized disclosure and that is so designated.

II. Program

The Assistant Director of Office Services in the Division of Support Services ("Assistant Director") is the senior official responsible for the Board's information security policy and program. Questions, suggestions, and complaints regarding this program shall be directed to the Assistant Director, who is responsible for changes to the program and for assuring that it is consistent with Executive Order 12356.

The Assistant Director serves as the Board's official contact for all requests for declassification of materials in accordance with the provisions of Executive Order 12356.

The Assistant Director and the Secretary of the Board will coordinate requests submitted under the Freedom of Information Act and the Privacy Act for documents classified pursuant to Executive Order 12356, or predecessor executive orders.

III. Procedures

A. *Mandatory Review of the Declassification Requests.* A mandatory review procedure has been established to handle requests by United States citizens or permanent resident aliens, federal agencies and state and local governments to declassify and release national security information pursuant to Executive Order 12356.

In coordination with the Secretary of the Board, all requests for mandatory review shall be handled by the Assistant Director or a designee. The Assistant Director and the Secretary of the Board shall refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the Privacy Act and the mandatory review provisions of Executive Order 12356 if the fact of its existence or non-existence is itself classifiable under Executive Order 12356, or predecessor executive orders.

B. *Handling.* The Assistant Director and other designated senior officials of the Board are authorized to receive certain classified national security information in accordance with their official responsibilities. Classified documents shall be made available only to those persons or their designees whose official duties require knowledge or possession of such materials.

Documents bearing the classifications "TOP SECRET," "SECRET," or "CONFIDENTIAL" shall be delivered to the International Information Center (IIC), Room B-1127, Board of Governors Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551. The staff of the IIC shall deliver such documents expeditiously to an authorized recipient. If an authorized person or designee is not available to receive such documents, the documents shall be turned over to the IIC or to the office of the Assistant Director for storage, unopened, until the authorized person is available.

C. *Storage.* Classified documents relating to national security information must be stored in a combination safe located in the IIC, or in other containers authorized by the Assistant Director and consistent with Executive Order 12356. Combination locks shall be changed as required by ISOO Directive #1, S2001.43. Combinations shall be known only to authorized staff and appropriate Board security officials.

D. *Reproduction.* Classified materials may be reproduced only in accordance with Executive Order 12356, Section 4.1, and ISOO Directive No. 1 S2001.46. Copies are subject to the same controls as original documents. Records showing the number and distribution of copies shall be maintained by the handling office, and logs shall be stored with the original documents. These measures do not prohibit reproduction for the purpose of mandatory review.

E. *Employee Education.* All employees who have been granted a security clearance and who have occasion to handle classifed material shall be advised of detailed handling, reproduction and storage procedures, and shall be required to review Executive Order 12356 and appropriate Information Security Oversight Office directives.

F. *Agency Terminology.* The Board does not have the authority to classify national security information. Material prepared at the Federal Reserve Board shall not bear the classification "TOP SECRET," "SECRET," or "CONFIDENTIAL," except in relation to

information contained within the material that has been classified for national security purposes by an authorized agency.

G. *Derivative Classification.* Information derived from classified documents, will be given the same classification as the original document from which the information was derived, after verifying the current level of the original document classification. The markings will be in accordance with Executive Order No. 12356. Dates or events for declassification or review shall be carried forward from the source material. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source materials shall be applied.

Board of Governors of the Federal Reserve System, September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21392 Filed 9-6-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Interagency Committee on Smoking and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory body scheduled to assemble during the month of October 1985:

Interagency Committee on Smoking and Health, October 1, 1985; 9:30 a.m.–3:00 p.m., Hubert H. Humphrey Building Auditorium, 200 Independence Avenue, SW., Washington, DC 20201.

Open.

Contact: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1575.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services and the Assistant Secretary for Health on the: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local health agencies, with respect to smoking and health activities.

Agenda: The entire meeting will be open to the public. It will include discussion of the smoking and health issue and the future directions of the Committee.

Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from the contact person listed above.

Dated: September 4, 1985.

John Bagrosky,

Executive Secretary.

[FR Doc. 85-21428 Filed 9-6-85; 8:45 am]

BILLING CODE 4160-17-M

Office of the Assistant Secretary for Health

Intent To Issue an Exclusive Patent License; Research Corp.

Pursuant to 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations and 41 CFR 101-4 of the Federal Procurement Regulations, notice is hereby given of an intent to issue to Research Corporation an exclusive license to manufacture, use, and sell an invention of Drs. Elliott Schiffman and Leonard C. Altman entitled "Formyl-Methionyl Chemotatic Peptide Antibiotic Conjugates Useful in Treating Infections." United States Patent No. 4,427,660 issued January 24, 1984.

Copies of the above United States patent may be obtained upon written request to Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, MD 20205.

The proposed license will run for the life of the patent with permission to sublicense, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department of Health and Human Services will grant the license unless, within 60 days of this Notice, the Chief of the Patent Branch receives in writing any of the following, together with supporting documents:

A. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

B. An application for a nonexclusive license to manufacture, use or sell the invention in the United States is submitted in accordance with 41 CFR 101-4 of the Federal Procurement Regulations, and 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101-4.

Dated: August 27, 1985.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 85-21358 Filed 9-6-85; 8:45 am]

BILLING CODE 4110-12-M

Notice of Intent to Issue an Exclusive Patent License; Thermedics, Inc.

Pursuant to 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations and 41 CFR 101-4 of the Federal Procurement Regulations, notice is hereby given of an intent to issue to Thermedics Inc. an exclusive license to manufacture, use, and sell the inventions listed below:

Patent No.	Title	Inventor(s)
4,016,303	Method of Flocking Blood-Contacting Surfaces on Artificial Implant Devices.	Victor L. Poirier, John T. Keiser.
4,023,468	Blood Pump Stroke Volume Limiter.	Victor L. Poirier.
4,047,849	Pneumatic Pulsator Pumping System with Pulsator Fluid Venting Value.	Warren C. Clay.
4,084,266	Artifical Implant with Fiber-Flocked Blood-Contacting Surface.	Victor L. Poirier, John T. Keiser.
4,096,653	Pneumatic Pump Monitor	David B. Gernes.
4,096,665	Artificial Blood Conduit	Victor L. Poirier.
4,104,005	Pneumatic Bladder Pump Having Stiffness Symmetry.	Do.
4,133,616	Stroke Volume Limiter of Collapsible Wall Blood Pump System.	Do.

Copies of the above United States patents may be upon written request to Mr. Leroy B. Randall, Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, MD 20205.

The proposed license will have a duration of 5 years from the date of first commercial sale of the product or 8 years from the date of the license, whichever comes first, with permission to sublicense, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services (HHS) Patent Regulations. HHS will grant the license unless, within 60 days of this Notice, the Chief of the Patent Branch, named hereinabove, receives in writing any of the following, together with supporting documents:

A. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

B. An application for a nonexclusive license to manufacture, use, or sell the inventions in the United States is submitted in accordance with 41 CFR 101–4 of the Federal Procurement Regulations, and 45 CFR 6.3 of the Department of Health and Human Services Patent Regulations, and the applicant states that he has already brought the inventions to practical application or is likely to bring the inventions to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101–4.

Dated: August 27, 1985.

James F. Dickson III,

Acting Assistant Secretary for Health.

[FR Doc. 85–21357 Filed 9–6–85; 8:45 am]

BILLING CODE 4110–12–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings; Correction

This notice is to correct a document that was published in **Federal Register** Volume 50, Issue 66, Page 34755, Document Number 85–20424 on August 27, 1985 as follows: The open portion of the September 14 meeting of the Mental Health Small Grant Review Committee, NIMH, will be from 1:00–2:00 p.m., instead of 9:30–10:30 a.m. The open portion of the September 12 meeting will remain as originally published (1:30–2:00 p.m.).

Dated: September 3, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–21371 Filed 9–6–85; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 85N–0397]

Direct-to-Consumer Advertising of Prescription Drugs; Withdrawal of Moratorium

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the voluntary moratorium on direct-to-consumer advertising of prescription drugs first requested in 1983. FDA has concluded that, for the time being, current regulations governing prescription drug advertising provide sufficient safeguards to protect consumers. The agency will continue to regulate prescription drug advertising in accordance with the Federal Food, Drug, and Cosmetic Act and applicable regulations.

The moratorium was intended to allow time for a dialogue among consumers, health professionals, and industry on the issue of direct-to-consumer advertising of prescription drugs. It was also intended to allow time for the conduct and interpretation of research by interested parties on aspects of consumer-oriented drug advertising. These two principal purposes for which FDA sought the voluntary moratorium have now been realized.

DATE: This notice is effective September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lloyd G. Millstein, Center for Drugs and Biologics (HFN–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3730.

SUPPLEMENTARY INFORMATION:

Background

In a speech to the Pharmaceutical Advertising Council, delivered on February 17, 1983, the Commissioner of Food and Drugs appealed for restraint on the part of the pharmaceutical industry in the promotion and advertising of prescription drugs directly to consumers. That appeal resulted in part from events suggesting that several pharmaceutical companies were preparing to undertake consumer-oriented advertising campaigns via electronic and print media. Such advertising had occurred earlier on a limited scale; a pneumonia vaccine had been advertised nationally in a widely distributed popular magazine, and a drug for the treatment of herpes had been promoted in an advertisement that appeared in a Washington, DC, daily newspaper. In addition, several firms notified FDA that consumer advertising campaigns were under active development.

Although consumer-oriented advertising via electronic and print media is permitted, law and regulations governing prescription drug advertising require, with certain exceptions, a brief summary of all necessary information related to side effects and contraindications in any advertisement that promotes a drug for a particular use. This requirement reflects the recognition that virtually all prescription drugs have side effects whose potential occurrence must be weighed in any decision to prescribe or use the drug. The brief summary is intended to ensure a "fair balance" between a drug's potential benefits and risks in all prescription drug advertisements.

Previous Statement of Policy

FDA issued a policy statement on September 2, 1983, to clarify the Commissioner's call for a period of cautious restraint on the part of would-be prescription drug advertisers. The two principal purposes of the moratorium were to allow time for a dialogue among consumers, health professionals, and industry on the issue of direct-to-consumer advertising of prescription drugs, and to allow time for the conduct and interpretation of research by interested parties on aspects of consumer-oriented drug advertising. In addition to setting out the principal reasons for the moratorium, the statement explained the desire to gather needed information to allow the agency to reach decisions on the regulation of consumer-oriented advertising of prescription drugs. The policy statement also explained the intended scope of the moratorium, which was to apply to all product-specific advertising that promoted a drug for its intended uses. The moratorium, however, did not apply to institutional advertisements that educate consumers about specific diseases but avoid reference to products manufactured by the sponsoring firm, because the public clearly can benefit from this type of advertising. The moratorium also did not cover advertisements comparing the prices of identical prescription drug products and meeting the requirements of 21 CFR 202.1(e)(2)(i) because of the potential of this advertising to promote competition and lower consumer prices. Being outside the scope of the moratorium from its outset, the continued appearance of these kinds of advertising is in no way affected by the agency's present action.

Public Dialogue

In the agency's opinion, the public dialogue on direct-to-consumer advertising of prescription drugs has provided interested individuals and organizations ample opportunity to consider and express opinions on the issue. FDA aided this dialogue by arranging a number of meetings in Washington, DC, and elsewhere at which spokespersons for industry,

consumers, and the health professions were invited to address the issue of consumer advertising of prescription drugs. Other organizations arranged similar meetings, the most notable of which was a symposium held April 30 through May 1, 1984, in Washington, DC, under the sponsorship of the University of Illinois and the Stanford Research Institute.

Congressional interest in this issue was reflected in a Staff Report of September 1984 prepared for the use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives.

In addition to wide public discussion, the issue of consumer-oriented prescription drug advertising has also been the subject of numerous research endeavors, including studies undertaken by FDA, Cable Health Network/Lifetime, and the Federal Trade Commission. Results of these studies have been made public and some were presented and discussed at the symposium mentioned above.

Conclusion

The two major purposes for which FDA sought a voluntary moratorium on prescription drug advertising to the general public have been met. FDA has concluded that, for the time being, current regulations governing prescription drug advertising provide sufficient safeguards to protect consumers. It is now appropriate that the moratorium be withdrawn. FDA will continue to regulate prescription drug advertising, regardless of its intended audience, in accordance with section 502(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) and the implementing regulations (21 CFR Part 202).

Dated: September 3, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-21435 Filed 9-4-85; 2:37 pm]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 47 FR 44620, October 8, 1982) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

FDA is retitling the Executive Secretariat as the Office of the Executive Assistant (OEA) and adding several functions for the coordination of program issues. OEA will remain in the Immediate Office of the Commissioner.

OEA will perform program coordination, management tracking, and other management and coordination functions for FDA.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (a-1), *Executive Secretariat (HFA-D).*

2. Insert new subparagraph (a-1), *Office of the Executive Assistant (HFA-D).*

(a-1) *Office of the Executive Assistant (HFA-D).* Coordinates identfication of and expedites development and implementation of the agency's highest program priorities for the Commissioner.

Coordinates and facilitates, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key agency officials on all activities that affect agencywide programs, projects and initiatives.

Performs special agencywide assignments involving complex problems and issues related to agency programs, strategies and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

Reviews, analyzes and evaluates pertinent aspects of the agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing materials, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and reponses to executive communication memoranda directed, to, or of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Commissioner and Deputy Commissioner, including drafting of texts and obtaining appropriate agency clearances.

Dated: August 30, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

[FR Doc. 85-21459 Filed 9-6-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[I-21547]

Realty Action; Exchange of Public Land in Jerome County for Private Land Within Blaine County, ID

In FR Doc. 85-19811, beginning on page 33642, in the issue of Tuesday, August 20, 1985, make the following corrections on page 33642:

In the third column, in the legal description under Blaine County, Idaho:

1. The first line should read "T. 2N., R. 18E., B.M."

2. In the sixteenth line, "NW¼SE¼" should read "SW4SE4".

BILLING CODE 1505-01

[Alaska AA-48334-C]

Proposed Reinstatment of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48334-C has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21, S., R. 4 E.,

Sec. 3, NE¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48334–C as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1985, subject to the terms and conditions cited above.

Dated: August 26, 1985.

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 21349 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–JA–M

Bureau of Reclamation

Cancellation of Scoping Workshop for Fallon Indian Reservation Irrigation and Drainage System Environmental Impact Statement

The Scoping Workshop date for the Fallon Indian Reservation Irrigation and Drainage System Environmental Impact Statement previously published on page 32121 in the **Federal Register** of August 8, 1985, (50 FR 32121) for September 11, 1985, at 7:30 p.m. in the Fallon Community Convention Center, 100 Campus Way, Fallon, Nevada, has been cancelled. No new Scoping Workshop date has been scheduled at the present time. When a new date is scheduled, another notice will be given.

The contact person for this environmental impact statement is Joel Verner, Attention: MP–410, telephone (916) 978–5049, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

Dated: September 6, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85–21671 Filed 9–6–85; 11:49 am]

BILLING CODE 4310–09–M

National Park Service

Intention To Negotiate Concession Permit; Vern-Del Enterprises, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Vern-Del Enterprises, Inc., authorizing it to continue to provide snackbar food service, general merchandise, sundries, and beach equipment rental for the public at Indiana Dunes National Lakeshore, Indiana, for a period of Five (5) years from January 1, 1986, through December 31, 1990.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which will expire by limitation of time on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304, for information as to the requirements of the proposed permit.

Dated: August 16, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85–21443 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, September 26, 1985, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Earnest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Mr. Charles Gould
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are the Marin Committee report on the Coast Guard Station Fort Point's proposed move to East Fort Baker and an update report on the feral pig problem.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent John H. Davis, Golden Gate National Recreational Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by October 25, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: August 29, 1985.

W. Howell White,

Acting Regional Director, Western Region.

[FR Doc. 85–21445 Filed 9–6–85; 8:45 am]

BILLING CODE 4310–70–M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold its regularly scheduled public meeting on Tuesday, September 10, 1985 at 7:30 p.m. at Diamond X Ranch, 26412 Mulholland Drive, Calabases, California.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa

Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

The minutes of the meeting will be available by September 30, 1985.

Dated: August 19, 1985.

Daniel R. Kuehn,

Superintendent.

[FR Doc. 85-21466 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council; Meeting

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 27, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. §1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 30, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-21444 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-122 (Sub-2)]

Lease of Equipment and Drivers to Private Carriers—Petition for Modification

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to reopening of policy statement.

SUMMARY: In a notice served August 1, 1985 (50 FR 31439, August 2, 1985), the Commission instituted this proceeding seeking comments on whether the requirement of a 30-day lease should be deleted in leases of equipment and drivers to private carriers. A 30-day comment period was provided. The purpose of this document is to give notice that the time for filing comments has been extended 30 days.

DATES: Comments must be received by October 3, 1985.

ADDRESS: An original and 15 copies of comments should be sent to: Ex Parte No. MC-122 (Sub-No. 2) Office of the Secretary Case Control Branch Interstate Commerce Commission Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein (202) 275-7912

or

Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION: The Truck Renting and Leasing Association (TRALA) has filed an emergency petition to extend for 30 days the time for filing comments in this proceeding.

TRALA actively participated in the original MC-122 (Sub-No. 2) proceeding, as well as in the proceeding to eliminate the 30-day rule from regulated carrier leases (Ex Parte No. MC-43 (Sub-No. 15)). The membership of the association represents a substantial segment of the transportation industry that would be affected by the proposed petitions. TRALA desires to further deliberate on its position in the instant proceeding, as well as the tenor of its comments to the Commission. TRALA's appropriate committee meetings are scheduled for September 28, 1985, with discussion of this proceeding as part of the agenda.

The 30-day extension of time for filing comments in this proceeding is reasonable and warranted. The extension will provide additional time for all parties to prepare comments without unduly delaying the completion of this proceeding.

It is ordered: TRALA's request for an extension of time for filing comments in this proceeding is granted. Comments are now due October 3, 1985.

Decided: August 30, 1985.

By the Commission, Malcolm M. B. Sterrett, Acting Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-21427 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-141)]

Seaboard System Railroad, Inc.; Abandonment in Lake County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc. to abandon its 14.54 mile rail line between Leesburg and Howey, in Lake County, FL, from milepost AS 802.16 to AS 808.60 and from milepost ASF-803.3 to milepost ASF-816.4.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-21426 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-33)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment in Contra Costa and San Francisco Counties, CA; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka and Santa Fe Railway Company to abandon its 10.4-mile rail line between Richmond (milepost 1191.69) and San Francisco (milepost 1202.09) in Contra Costa and San Francisco Counties, CA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Secton AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-21424 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 94X); Finance Docket No. 30714]

Southern Pacific Transportation Co.; Abandonment Exemption; Sacramento County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval (1) under 49 U.S.C. 10903, et seq., the abandonment by the Southern Pacific Transportation Company of certain track in Sacramento County, CA, subject to standard labor conditions; and (2) under 49 U.S.C. 10901, the operation by Southern Pacific Transportation Company over railroad track in Sacramento, Sacramento County, CA.

DATES: These exemptions shall be effective on September 6, 1985. Petitions to reopen must be filed by September 30, 1985.

Send pleadings referring to Docket No. AB-12 (Sub-No. 94X) and Finance Docket No. 30714 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 298-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-21425 Filed 9-6-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

September 4, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Public Law 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

• **Revision of a Currently Approved Collection**

(1) Larry E. Miesse, 202/633-4312
(2) Correctional Programs Branch, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice
(3) National Prisoner Statistics
(4) NCRP-1A, NCRP-1B, NCRP-1C
(5) Annually
(6) State and local governments, Federal agencies or employees. Used to enumerate and describe annual movements of adults and youthful offenders into and out of state and Federal correctional systems and to provide statistics describing the Nation's parole population.
(7) 322,000 respondents
(8) 1,200 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

• New

(1) Larry E. Miesse, 202/633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Applicant Background Questionnaire (Investigator)
(4) DEA-466
(5) On occasion (for initial employment)
(6) Individuals or households. Will be required of persons applying to the Drug Enforcement Administration for the critical/sensitive position of Investigator, which requires the conduct of a background investigation in compliance with Executive Order 10450.
(7) 700 respondents
(8) 1,750 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

• **Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection**

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service
(3) Application for Cuban refugee for permanent residence
(4) I–485A
(5) On occasion
(6) Individuals or households. Form is used by Cuban refugee to apply for permanent residence. Data is used by INS to determine eligibility.
(7) 15,000 respondents
(8) 7,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application to file declaration of intention
(4) N–300
(5) On occasion
(6) Individuals or households. Section 334(f) of the I&N Act provides for issuance of a declaration of intention to become a citizen of the United States. Form is used by INS to determine if applicant is eligible for issuance of declaration.
(7) 4,000 respondents
(8) 2,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Affidavit of witness
(4) I–488
(5) On occasion
(6) Individuals or households. Used in various Service proceedings such as suspension of deportation and voluntary departure; also used in connection with application for creation of record of lawful admission under Section 249 of the I&N Act, and is needed for adjudicating petitions and applications.
(7) 2,500 respondents
(8) 416 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Agreement by transportation line to assume responsibility for removal of aliens
(4) I–259A
(5) On occasion
(6) Individuals or households. Section 233 of the I&N Act provides for the master or agent of a vessel or aircraft to assume responsibility for the removal of aliens who are or may be excludable under Section 212(a) of the Act. This form is used as the vehicle for such an agreement.
(7) 6,000 respondents
(8) 516 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for transfer of petition for naturalization
(4) N–455
(5) On occasion
(6) Individuals or households. Used by applicant for naturalization to request transfer of petition to another court and by INS to make recommendation to the court.
(7) 800 respondents
(8) 133 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 85–21423 Filed 9–6–85; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

American Folklife Center Board of Trustees; Meeting

In accordance with Pub. L. 94–463, the Board of Trustees of the American Folklife Center announces its meeting to be held in Washington, D.C. on Friday, September 27, from 9:30 a.m. to 4:30 p.m. in the Whittall Room of the Library of Congress. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Ray Dockstader, American Folklife Center (202) 287–6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94–201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members for Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader;

Deputy Director, American Folklife Center.

[FR Doc. 85–21379 Filed 9–6–85; 8:45 am]

BILLING CODE 1410–01–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974, System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Final notice of routine use for existing system of records.

SUMMARY: The purpose of this document is to publish final notice of the Merit Systems Protection Board's (MSPB) addition of a routine use to its Privacy Act system of records MSPB/Govt–1, Appeal and Case Records.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Conley, [202] 653–8902.

SUPPLEMENTARY INFORMATION: The MSPB is required by statute to conduct special studies relating to the civil service system and to other merit systems in the executive branch and to report to the President and to the Congress as to whether the civil service is adequately protected. 5 U.S.C. 1205(a)(3). In order to carry out this function, the MSPB may find it necessary on occasion to provide individuals in the Office of Personnel Management (OPM) and other federal and state agencies certain identifying information about individuals who have filed appeals with the Board. This identifying information would be used to obtain from the appropriate agencies the information necessary to support MSPB's statautorily mandated research projects. The information provided by these sources would not be used in a personally identifiable manner in the resulting projects. The information would be used only as a basis for developing aggregate statistics. Further, the information obtained would not be used to make decisions about the rights, benefits or privileges of specific individuals. Upon completion of the project for which information was obtained, the MSPB would ensure that any personal identifying information is destroyed.

For example, in order to obtain current information on federal employees for the purpose of developing an address listing for use in mailing out questionnaires, the Board may provide

Social Security numbers from its appeal files to OPM. The information would be matched with OPM's listing of the servicing personnel offices for those federal employees whom the Board wishes to contact for study participation. The Board would then obtain the employee's address from information provided by the servicing personnel office. Questionnaires would be mailed to the survey population. Data from the returned questionnaires would only be reported in the aggregate. Personally identifiable information, such as the employee's address, would not be included in the MSPB's final report.

MSPB/GOVT–1 last appeared in 47 FR 57803 dated December 28, 1982. The MSPB now adds one new routine use of MSPB/GOVT–1, Appeal and Case Records, as follows:

MSPB/GOVT–1

SYSTEM NAME:

MSPB/GOVT–1, Appeal and Case Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

* * * * *

l. To federal and state agencies for the purpose of providing the MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in the MSPB's research projects mandated by 5 U.S.C. 1205(a)(3).

* * * * *

Dated: September 3, 1985.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 85–21441 Filed 9–6–85; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Senior Executive Service; Performance Review Board Membership

AGENCY: National Credit Union Administration.

ACTION: Notice of appointment to performance review board.

SUMMARY: Notice is hereby given of appointment of members of the Performance Review Board.

DATES: Effective August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy W. Foster, Director, Personnel Office, National Credit Union Administration, 1776 G Street NW, Washington, DC 20456; Telephone (202) 357–1156.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Mrs. Elizabeth F. Burkhart, Member, NCUA Board.

2. Mr. Harvey J. Baine III, Director, Region II (Capital).

3. Mr. Robert M. Fenner, Director, Office of Legal Services.

Dated: September 2, 1985.

P.A. Mack, Jr.,

Acting Chairman.

[FR Doc. 85–21389 Filed 9–6–85; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322–OL]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of August 27, 1985, oral argument of the appeal of Suffolk County and the State of New York from the Licensing Board's June 14, 1985 partial initial decision on emergency diesel generators will be heard at *2:00 p.m. on Thursday, September 26, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: September 3, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–21466 Filed 9–6–85; 8:45am]

BILLING CODE 7590–01–M

[Docket No. 50–298]

Nebraska Public Power District (Cooper Nuclear Station); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46 which authorizes the operation of the Cooper Nuclear Station at steady state reactor power levels each not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located in Nemaha County, Nebraska.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated July 11, July 28, and December 30, 1983, the licensee modified several dates as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's

commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On February 22, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments.

IV

The February 22, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the February 22, 1984 order, the licensee provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).	1b. SPDS fully operational and operators trained.
2. Detailed Control Room Design Review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.
5. Emergency Response Facilitiesd.	5a. Technical Support Center fully functional. 5c. Emergency Operations Facility fully functional.

The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee. The staff reviewed the licensee's March 1, April 16, and August 9, 1984 and March 6, and May 29, 1985 letters and discussed the dates with the licensee. As a result of these discussions, the licensee provided certain revised dates by letter dated June 18, 1985.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licenee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that Facility Operating License No. DPR–46 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this Order in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 29th day of August 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	July 31, 1986.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Prior to Startup for Cycle 13 Operation (approx. Spring 1989)
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed
	4b. Implement the upgraded EOPs	Sept. 30, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Dec. 31, 1986.
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Dec. 31, 1986.

[FR Doc. 85–21468 Filed 9–6–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Order Modifying License Confirming Additional Licensee commitments on Emergency Response Capability

I

Vermont Yankee Nuclear Power Station (the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes the operation of the Vermont Yankee Nuclear Power Station, (the facility) at steady-state power levels each not in excess of 1593 megawatts thermal. The facility is a boiling water reactor (BWR) located in Windham County, Vermont.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 19, 1983. By letters dated August 4 and 12, and November 16, 1983, the licensee modified several dates as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments. By letters dated June 12 and August 22, 1984 and May 31, 1985, the licensee requested that the completion dates for Regulatory Guide 1.97 and implementation of the Upgrade Emergency Operating Procedures (EOPs) requirements (Items 3a., 3b. and 4b. of the Table attached to the June 12, 1984 Order) be extended. By letters dated September 28, 1984 and June 6, 1985, the NRC granted this extension.

IV

The June 12, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, as modified by the NRC letters dated September 28, 1984 and June 6, 1985, the licensee letters dated October 31, 1984 and February 1 and June 21, 1985 provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).	1b. SPDS fully operational and operators trained.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.

The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee. The staff reviewed the licensee's October 31, 1984 and February 1 and June 21, 1985 letters and discussed the dates with the licensee.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 102, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, That Facility Operating License No. DPR-28 modified to provide that the licensee shall:

Implement items 1b and 3b described in the Attachment to this ORDER in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Exective Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 29th day of August 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	Prior to start up for cycle 14 (approximately Fall 1988).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Prior to start up for cycle 13 (approximately Summer 1987).
4. Ugrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed.
	4b. Implement the upgraded EOPs	Prior to start up for cycle 12 (approximately Spring 1986).
Emergency Response Facilities	5a. Technical Support Center fully functional	Fully functional except that data acquisition will be complete when SPDS is complete.
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Nov. 1, 1985.

[FR Doc. 85-21467 Filed 9-6-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designation of Major Wine Trading Countries

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Designation of "Major Wine Trading Countries".

SUMMARY: The United States Trade Representative designates the following as "major wine trading countries": Canada, Japan, Mexico, South Korea, Trinidad and Tobago, and Taiwan.

The Trade and Tariff Act of 1984 (the "Act") was signed into law on October 30, 1984. Title IX of that Act, the Wine Equity and Expansion Act of 1984 provides USTR with specific responsibility to respond to problems that Congress has found are facing the U.S. wine industry. Among these responsibilities are: (1) The designation of "major wine trading countries" and (2) the development and coordination of reports on wine trade.

On July 18, 1985, a **Federal Register** notice was published requesting comments on the USTR's intention to designate Canada, Jamaica, Japan, Mexico, South Korea and Taiwan. Based on comments and other information, the U.S. Trade Representative has determined that Canada, Japan, Mexico, South Korea, Taiwan, and Trinidad and Tobago are designated pursuant to Title IX. Consultations with these will be requested soon.

Jamaica is not designated since it has recently altered its policies to eliminate certain trade barriers. However, the Office of the U.S. Trade Representative will continue to monitor the situation in consultation with the domestic industry.

Depending upon further information received, additional countries may be designated at a later date.

FOR FURTHER INFORMATION CONTACT:

Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy, Office of the U.S. Trade Representative, Room 423, 600 17th Street, NW., Washington, D.C. 20506, (202) 395-5006.

Alexander Platt, Associate General Counsel, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, (202) 395-7305.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85-21413 Filed 9-6-85; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22373; File No. SR-Phlx-85-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Notice of Proposed Rule Change and Partial Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Exchange") proposes to amend Exchange Rules 1033 and 1066 to (i) expand the definition of spread and combination orders and (ii) provide for stock-option orders, thus permitting such orders to be executed under the priority trading rule. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted. Rule 1033 Bids and Offers—Premium

(a)-(c) No change.

(d) When a member holding a spread order, a straddle order, [or] a combination order, *or a stock-option order* and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the *options* marketplace, then the order may be executed as a spread, straddle, [or] combination, *or stock-option order* at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell

at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers, *or (iii) in the case of a spread order, when the number of contracts to be purchased and sold are not the same, or do not represent the same number of shares at option (if the underlying security is a stock) or the same number of foreign currency units (if the underlying security is a foreign currency) a Registered Options Trader or a Specialist may not execute such spread pursuant to this Commentary .01 with another Registered Options Trader or Specialist.*

Rule 1066

(a)-(c) No change.

(d) Spread Order—A spread order is an order to buy a stated number of option contracts and to sell *up to three times* the [same] number of option contracts, or contracts representing *up to three times* the [same] number of shares at option (if the underlying security is a stock) or *up to three times* the [same] number of foreign currency units (if the underlying security is a foreign currency), in a different series of the same class of options.

(e)-(g) No change.

(h) Combination Order—A combination order is an order [to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts] *involving a number of call option contracts and the same number of put option contracts in the same underlying security and* representing the same number of shares at option (if the underlying security is a stock) or the same number of foreign currency units (if the underlying security is a foreign currency), [which contracts do not have both the same exercise and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security, or put and call option contracts representing the same number of shares at option (if the underlying security is a foreign currency), which contracts do not have both the same exercise price and expiration date. (E.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order)]. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares at option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Over the last several years, the exchange has observed the significant and continually increasing role that spread and combination orders, as well as certain stock-option transactions, play in the options markets. In that regard, the Exchange is proposing amendments to certain options rules to provide options investors and traders with an efficient and effective marketplace within which to execute such orders.

By expanding the current definition of spread and combination orders and creating a stock-option order, all such orders would be eligible to be executed in trading crowds under the appropriate priority trading rule. The priority rule, Exchange Rule 1033, governs the execution of certain option orders which have two components ("legs"). The rule permits one leg of such an order to be executed at the established bid or offer (thus taking priority over such bid or offer) so long as the other leg of the transaction is simultaneously executed with the same party at a price which is better than the established bid or offer for such other series.

(1) Combination Orders

Conversion and reverse conversion trading continues to play an active and increasing role in the options markets. Conversion and reverse conversion trading is generally utilized by professional traders and sophisticated investors either to hedge common stock positions or to "lock in" a specific rate of return on an investment over the lift of the option components.[1]

Currently, Exchange members wishing to execute the two option legs of a conversion or reverse conversion must enter two separate orders. For example, in the case of a conversion, a member must enter an order to sell a call option and another order to purchase a put option. The member is, therefore, at risk in that one of the orders may be filled, while the other order goes unexecuted.

The Exchange now proposes to expand the definition of a combination order to include put and call options on the same side of the market (i.e., long puts and short calls or short puts and long calls) with any combination of exercise prices and expiration months. Accordingly, the options portions of a conversion or reverse conversion could be entered as a single combination order. Under the new definition, a combination order would involve the same number of puts and calls.

It should be noted that on January 29, 1982 the Commission approved a substantively *identical* rule change proposed by the Chicago Board Options Exchange ("CBOE") (see SEC Release No. 18458).

(2) Spread Orders

A spread order is an order to simultaneously buy and sell either put option contracts or call option contracts. Under the current definition, each leg of a spread order relates to the same number of shares of the underlying stock. The Exchange now proposes to amend the definition of spread orders to include ratio orders, with ratios not in excess of 1 to 3.[2] Thus, ratio orders could be entered at a total net debit or credit and executed under the priority trading rule.

Ratio orders are used by investors and traders to "roll" from one option position to another option position, as the price of the underlying stock moves. This strategy typically involves the buying of a certain number of option contracts and the simultaneous selling of up to two or three times that number of option contracts. To ensure that ratio spread orders executed under the spread priority rule facilitate public orders, the Exchange further proposes that Registered Options Traders and Specialists may execute such spreads under the priority rule only when an off-

[1] A conversion is a three component position comprised of a long position in common stock, a short call option and a long put option. A reverse conversion is comprised of a short position in common stock, a long call and a short put. The option components of a conversion or reverse conversion are usually, although not always, transacted with the same exercise price and expiration month.

[2] An example of a spread order under the current definition is: Buy 1 XYZ July 45 call; Sell 1 XYZ July 50 call. The new definition would permit: Buy 1 XYZ July 45 call; Sell 3 XYZ July 50 calls.

floor customer order is on the other side of the trade.

(3) Stock-Option Orders

Two of the most popular strategies used by public customers in the options markets today are covered call writing and protective put buying. Each strategy involves an underlying stock position and an off-setting (hedged) option position. A covered call is comprised of a long stock position and a short call option; a protective put is comprised of a long stock position and a long put option.

A major objective of investors in writing covered calls is to earn a greater return (from the premium income received when the call is sold) than would be earned on the stock investment alone. With regard to protective puts, investors desiring to protect profits in shares of stock currently owned or in newly acquired shares of stock often purchase put options as a hedge against a decline in stock prices. In effect, the put options provide protection—"insurance"—against a sharp near-term decline in the price of the stock.

In recognition of the importance of these two popular strategies among public customers, the Exchange proposes to create a new type of order to be called a "stock-option order." The proposal herein is limited to those options strategies that hedge stock positions on a share-for-share basis (e.g. buying 100 shares of stock and selling 1 call option).

Under the proposal, customers would be able to execute stock-option orders under the priority rule only when they are establishing both components of a covered call or protective put position. For example, an order to buy 100 XYZ shares and simultaneously sell 1 XYZ call option could be entered as a stock-option order.

Since the stock component of a covered call and protective put position may be executed in another marketplace, the proposed rule will also require stock-option orders to be appropriately marked. This will enable Exchange staff to monitor compliance for executions under the priority rule and, thus, ensure the integrity of the Exchange's options marketplace.

The Commission has recognized the utility of stock-option orders and has granted such orders limited priority under the priority trading rules (see SEC Release No. 20294, dated October 17, 1983, approving SR–CBOE–83–04). Specifically, the Commission permitted such orders to have priority over bids or offers in the trading crowd. However, the Commission did not extend priority over bids or offers on the limit order book.

The Exchange strongly believes that the extension of the priority rule is now warranted so that stock-option orders could have priority over both the trading crowd and the limit order book. As stated above, the Commission already has recognized the utility of conversions and reverse conversions (which are strategies primarily transacted by professional traders) and has allowed these orders to fall within the priority rule. Therefore, stock-option orders, which are the "backbone" of the public customer business, should receive similar treatment.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by facilitating the execution of combination, spread and stock-option orders thus enhancing depth and liquidity in the options markets.

Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectivness of the Proposed Rule Change and Timing for Commission Action

With respect to that portion of the proposed rule change described in Sections II.A. (2) and (3), within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Accelerated Approval of Proposals Described in Section II.A.(1).

As noted above, the Phlx proposal to amend the current definition of combination orders is essentially identical to a CBOE rule proposal the Commission approved several years ago.[3]

For the reasons discussed in the order approving that CBOE proposal, the Commission finds that the Phlx proposal to expand the definition of combination orders is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6. This Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission previously approved substantially identical proposals by the CBOE and the Amex, and has not received any adverse comments on these proposals.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change described in Section II.A.(1) above is approved.

V. Solicitation of Comments

The Commission is publishing this release to solicit comment on the proposed rule changes described in Sections II.A. (2) and (3) above. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file

[3] *See* rule filing No. SR–CBOE–81–5, approved in Securities Exchange Act Release No. 18458 (January 29, 1982), 47 FR 5560 (February 5, 1982). *See also* SR–Amex–85–9, Release No. 34–22090 (April 30, 1985), 50 FR 19504 (May 8, 1985).

number in the caption above and should be submitted by September 30, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21484 Filed 9-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22372; File No. SR-MSRB-85-17]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Uniform Practice and Confirmations, Clearance and Settlement of Transactions With Customers

The Municipal Securities Rulemaking Board on August 14, 1985, filed with the Securities and Exchange Commission pursuant to Section 19 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith amendments to Board rules G-12 on uniform practice and G-15 on confirmation, clearance and settlement of transactions with customers (hereafter referred to as the "proposed rule change"). The Board has requested that the Commission delay the effectiveness of the proposed rule change for a period of 30 days following the date of Commission approval in order to provide time for information concerning approval of the proposed rule change to be circulated to all persons to be affected by it. The text of the proposed rule change is as follows: [1]

Rule G-12: Uniform Practice

(a)-(k) No change.

(l) Interest Payment Claims. A broker, dealer or municipal securities dealer seeking to claim an interest payment on a municipal security from another broker, dealer or municipal securities dealer may claim such interest payment in accordance with this section. A broker, dealer or municipal securities dealer receiving a claim made under this section shall send to the claimant a draft or bank check for the amount of the interest payment or a statement of its basis for denying the claim no later than 10 business days after the date of receipt of the written notice of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

(i) Determining Party to Receive Claim. A claimant making an interest payment claim under this section shall direct such claim to the party described in this paragraph (i).

(A) Previously Delivered Registered Securities. An interest payment claim made with respect to a security previously delivered to the claimant which is registered in the name of a broker, dealer or municipal securities dealer at the time of delivery shall be directed such broker, dealer, or municipal securities dealer. A claim made with respect to a previously delivered registered security not registered in the name of a broker, dealer or municipal securities dealer shall be directed to the broker, dealer or municipal securities dealer guaranteeing the signature of the registered owner or, if neither the registered owner nor its signature guarantor is a broker, dealer or municipal securities dealer, to the broker, dealer or municipal securities dealer that first placed a signature guarantee on any assignment or power of substitution accompanying the security.

(B) Previously Delivered Bearer Securities. An interest payment claim made with respect to a bearer security previously delivered to the claimant shall be directed to the broker, dealer or municipal securities dealer that previously delivered the security.

(C) Securities Delivered by Claimant. An interest payment claim made with respect to a security previously delivered by the claimant shall be directed to the broker, dealer or municipal securities dealer that received the securities.

(ii) Content of Claim Notice. A claimant seeking to claim an interest payment under this section shall send to the broker, dealer or municipal securities dealer against which the claim is made a written notice of claim including, at minimum:

(A) The name and address of the broker, dealer or municipal securities dealer making the claim;

(B) The name of the broker, dealer or municipal securities dealer against which the claim is made;

(C) The amount of the interest payment which is the subject of the claim;

(D) The date on which such interest payment was scheduled to be made (and, in the case of an interest payment on securities which are in default, the original interest payment date);

(E) A description of the security (including any CUSIP number assigned) on which such interest payment was made;

(F) A statement of the basis of the claim for the interest payment;

(G) If the claim is based on the delivery of a registered security, the certificate number of each security on which the claim is based and a photocopy of the certificate(s) on which the claim is based or (in lieu of such a photocopy) a written statement from the paying agent identifying the party that received the interest payment which is the subject of the claim; and,

(H) If the claim is made against the broker, dealer or municipal securities dealer that previously delivered the security on which the claim is based, or the broker, dealer or municipal securities dealer that received such security, the delivery date or settlement date of the transaction.

G-15: Confirmation, Clearance and Settlement of Transactions with Customers

(a)-(d) No change.

(e) Interest Payment Claims. A broker, dealer or municipal securities dealer that receives from a customer a claim for the payment of interest due the customer on securities previously delivered to (or by) the customer shall respond to the claim no later than 10 business days following the date of receipt of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Amendments to Rule G-12

Board rule G-12 on uniform practice sets forth certain requirments concerning transactions in municipal securities between brokers, dealers, or municipal securities dealers ("dealers"). Rule G-12(e)(xiv)(G) requires the attachment of an interest payment check

[1] Italics indicate new language.

for the amount of the security's next interest payment to an interdealer delivery of a registered municipal security, if the delivery occurs after the record date of the security. A delivery occurring prior to the security's record date need not be accompanied by an interest payment check (although the parties may agree that an interest payment check is required as a term of the transaction). If the dealer receiving such a delivery neither receives such an interest payment check nor accomplishes transfer of record ownership prior to the record date for the security, the interest payment will be directed to the registered owner of the security as of the record date, and the dealer will be required to obtain reimbursement for the interest payment.

To date, members of the municipal securities industry have followed informal procedures for making and processing claims for such interest payments. The lack of any formalized procedure has led to delays in the payment of interest claims. The proposed rule change would provide a standard procedure for making and responding to interest payment claims based on deliveries of registered and bearer securities. Under the proposed procedure, a claimant could file a claim, and the dealer receiving such claim would be required to respond with a check or draft for the amount of the interest payment (or a statement of the basis for denying the claim) within 10 business days or, if the claim relates to an interest payment made more than 60 days prior to the date of the claim, within 20 business days. The proposed rule change would not prohibit use of alternative claim procedures.

The proposed rule change would allow an interest payment claim based on the delivery of a registered security to be directed to the registered owner of the security as of the delivery date if the registered owner is a dealer, and to the first dealer to guarantee a signature on the security if the registered owner is not a dealer. The Board believes that this procedure, in which interest claims are made directly to the dealer that received the interest payment in question (or to the dealer whose customer received the interest payment) would provide optimum efficiency in the claim procedure.

If the registered owner of the security is not a dealer, the procedure would require that the claim be directed to the first dealer that guaranteed a signature on the security or on any attached assignment or power of substitution. In cases in which a dealer is selling a security registered in its customer's name, that dealer, in most cases, will guarantee the signature of the customer on the assignment. The procedure in the proposed rule change will allow a claim to be sent directly to that dealer, who would be in the best position to obtain the misdirected interest payment from its own customer. In cases in which neither the registered owner nor the first signature guarantor is a dealer, the proposed rule change would allow an interest payment claim to be made against the dealer whose signature guarantee first appears on the security's assignment or on any attached power of substitution. The Board is aware that this dealer may have no customer relationship with the registered owner and may have to initiate its own claim, outside of the procedure offered by the proposed rule change, in order to obtain payment on the interest claim; however, the Board notes that it would be the dealer identifiable from the physical security and associated transfer documents as having the earliest association with the chain of transactions which resulted in the misdirected interest payment.

The proposed rule change also includes standard procedures for making claims based on deliveries of bearer securities and deliveries on which an interest payment check has been erroneously attached. The proposed procedure provides that a claim for an interest payment based on a delivery of bearer securities be directed to the dealer that delivered the securities and that, in cases in which an interest payment check is erroneously attached to a delivery and not returned by the receiving dealer, the claim be made against the dealer receiving the delivery with the erroneously attached interest payment. The 10/20 day time limits for responses to claims and the requirements for certain information to be placed in the notice of claim would apply to these claims.

These provisions primarily would codify current industry practice. The Board believes, however, that the addition of definitive time limits for responses to claims would improve efficiency of the claim process.

The proposed rule change would require a dealer using the procedure to provide a written notice of the claim to the dealer against which the claim was filed, containing certain information identifying the parties involved in the claim, the securities and the interest payment on which the claim is based, a statement of the basis of the claim, and, if the claim is based on a delivery of a registered security, a photocopy of the security on which the claim is based (or a written statement from the paying agent identifying the party that received the interest payment in question). If the claim is made against the dealer that delivered the securities (or the dealer to which the securities were delivered) the delivery date or settlement date of the transaction also would be included. The Board believes that this information is necessary for the dealer receiving a claim to research its validity and respond within the prescribed time limits.

Amendment to Rule G–15

Rule G–15 sets forth certain requirements regarding confirmation, clearance and settlement of transactions between dealers and customers. The proposed rule change includes an amendment to rule G–15 that would require dealers to respond to claims for interest payments made by customers within 10 business days if the claim is not more than 60 days old, within 20 business days if the claim is more than 60 days old.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules

> designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers and serves mainly to promote conformity in current industry practices with regard to claims made for misdirected interest payments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board released for public comment in November of 1984 an exposure draft of amendments to rule G–12(e)(xiv)(G) regarding attachment of interest payment checks to deliveries of registered securities and also asked specifically for comment whether the Board should provide a standard procedure for the handling of interest payment claims. Nine letters of

comment on the exposure draft were received and six of the none commentators expressed support for a standard interest payment claim procedure. Three commentators did not express an opinion on the issue.

In April 1985 the Board published for industry comment draft amendments to rules G–12 and G–15 containing a proposed standard interdealer interest payment claim procedure and time limits for responses to customer interest payment claims. The procedure described in the exposure draft would have required a claimant to direct its claim to the dealer that delivered the security. In cases involving a delivery of registered securities not registered in that dealer's name, the draft amendments contemplated that the dealer would "retransmit" the claim to the dealer from which the securities were received, this process repeating itself until the dealer that received the misdirected interest payment (or the dealer whose customer received the misdirected interest payment) received the claim. The draft amendments proposed that dealers respond to interdealer claims made under the procedure (and to all customer claims) within 10 business days of the date of the claim for claims based on interest payments not more than 60 days old and within 20 business days for older claims. The draft amendments also required a dealer seeking to claim an interest payment to send a written notice of the claim, including certain standard information identifying the parties involved in the claim, the securities on which the claim was based, the amount of the claim and a statement of the basis of the claim.

The Board recieved 10 letters of comment on the draft amendments, which generally supported the creation of a standard interest payment claim procedure. Two commentators indicated support for the procedure proposed by the draft amendments, requiring claims to be made against the dealer that delivered the securities. The majority of the commentators, however, suggested that, at least in cases in which a dealer is a registered owner, the claim should be directed to that dealer rather than the delivering dealer. They argued that, in situations involving several dealers, creating a "chain" of claims, as contemplated by the draft amendments, would result in delays in payment to the dealer initiating the claim and create unnecessary paperwork for the dealers in the middle of the "chain." The Board has included this modification in its proposed rule change.

Three commentators made specific recommendations on where claims should be directed when the registered owner is a customer. One commentator suggested that the claim be made against the delivering dealer in such a case. Two of the commentators, however, recommended that the claim be directed to the dealer guaranteeing the customer's signature. The Board believes that, because of the customer-dealer relationship that normally exists between a non-dealer registered owner and the first signature guarantor, it would be appropriate to direct claims based on a security registered in a customer's name to the signature guarantor if the guarantor is a dealer. The Board has incorporated this suggestion in the proposed rule change.

Three commentators recommended approval of the 10/20 day time frame for response to claims contained in the draft amendments. Other commentators suggested longer or shorter time frames for responses. The Board notes that researching claims sometimes may involve manual searches through records and could require information to be obtained from clearing agents. The Board believes that the 10/20 business day time limits contained in the proposed rule change provide a sufficient, but not an excessive, amount of time to research the validity of such claims. If the experience with the 10/20 day standards set forth in the proposed rule change proves to be too long or too short for general industry use, the Board would consider amendments to the rule to reflect industry experience with the procedure.

The commentators generally supported the inclusion of the standard information specified by the April exposure draft to be included in the notice of claim and suggested other information to be included in notice of claim. Several commentators suggested the inclusion of documentation sufficient to show that the party receiving the claim has been identified correctly (i.e., is in fact the registered owner or the first dealer signature guarantor of a security on which an interest payment claim is filed). The Board believes that a photocopy of the front and back of the certificate, or the certifificate numbers of the securities and a document from the paying agent showing the party that was paid the interest payment in question, would serve this purpose and has incorporated this suggestion into the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or interest payment check nor accomplish transfer of record ownership prior to the record date of the security, the interest payment will be directed to the registered owner of the security as of the record date, and the dealer will be required to obtain reimbursement for the interest payment.

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned sefl-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21483 Filed 9–6–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22376; File No. SR-NASD-85-19]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers Relating To Proposed Fees To Be Paid for Each Interrogation of Display Device Receiving Information Disseminated by Means of the National Quotation Data Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1985, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items II, III, and IV below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Background of the Proposed Rule Change

The NASD currently offers NASDAQ quotation information to the public in three forms. NASDAQ Level 1 service provides the inside market (the best bid and offer) for a security and is carried only by vendors other than the NASD. The NASD charges subscribers $8.75 a month for Level 1, which subscribers must pay to the NASD in addition to any vendor fees which the supplier of the information may charge. Approximately 100,000 terminals receive Level 1 service.

NASDAQ level 2 service provides in addition to Level 1 information a full quotation montage showing each market maker for a NASDAQ security and its quotations. This service is provided only by the NASD, using NASDAQ terminals. Level 2 costs $150 a month per terminal. Level 3 is the same as Level 2, which the added ability to enter quotations. Level 3, also marketed exclusively by the NASD, is available only to market makers and is priced the same as Level 2. There are approximately 330 Level 2 terminals, and 1,900 Level 3 terminals.

The Commission's firm quotation rule, Rule 11Ac1-1 under the Act, required, as of April 1, 1982, the NASD to make full quotation information available to vendors on those OTC securities designated as National Market System ("NMS") Securities.[1] In light of that requirement, the NASD asked all vendors whether they were interested in receiving this quotation information on NMS Securities. Only Instinet expressed an interest in receiving the data.

The Commission granted the NASD a number of exemptions[2] from having to provide Instinet the data until after technical preparations and negotiations over access terms, with fees as the principal issue, were completed. Despite almost two years of negotiations, the parties could not reach an agreement on fees. The NASD thereupon filed with the Commission its proposed fees.[3] The terms of the NASD's proposed fees were identical to the NASD's last offer to Instinet for the service under consideration in this proceeding [referred to by the NASD as the National Quotation Data Service ("NQDS")]. Under the proposed fees, Instinet would be charged $3,200 a month for the direct computer-communication costs of transmitting the quotation information from the NASD to Instinet. Instinet's customers, who subscribed to the information, would be charged by the NASD a monthly per terminal subscriber fee based on the NASD's $150 Level 2/3 fee. The $150 fee would be reduced, however, to reflect that Instinet only would receive quotations in NMS Securities.[4]

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to Section 11A(b)(5) of the Act alleging that the fees for NQDS were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information. In its petition, Instinet, however, sought access to quotation information on all NASDAQ securities, not just NMS Securities.[5]

On August 16, 1983, the Commission issued an order pursuant to section 11A(b)(5) of the Act preliminarily finding that, at least with respect to those securities designated as NMS Securities, the proposed fees constituted a prohibition or limitation on access to services, and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the provisions of the Act.[6] In that order, the Commission also solicited comments on certain issues raised in the proceedings, including whether Instinet should receive access to quotation information on all NASDAQ securities and in a separate release instituted proceedings pursuant to Section 19 of the Act to determine whether to approve or disapprove the proposed fees.[7]

After reviewing the record of the proceeding,[8] the Commission, on April 17, 1984, issued an order,[9] among other things, determining that, because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers. Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee [10] because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet. One such function that the Commission held entailed costs the NASD should not be permitted to recover was the inquiry or quotation query function, which requires the maintenance of a database to store quotations for subscriber recall. The Commission determined that NQDS was not dependent on the query function as that service would provide Instinet raw quotation data and Instinet would have to develop and offer its own inquiry service to subscribers.[11]

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[1] 17 CFR 240.11Ac1-1. NMS Securities are those OTC securities designated as such pursuant to Rule 11Aa2-1 under the Act, 17 CFR 240.11Aa2-1. The primary effect of designation is to subject OTC stocks to the Commission's firm quotation rule, and last sale reporting rule, Rule 11Aa3-1 under the Act, 17 CFR 240.11Aa3-1.

[2] *See* Securities Exchange Act Release Nos. 18585 (March 23, 1982), 19112 (October 12, 1982), and 19564 (March 3, 1983); 47 FR 13265, 46793, and 48 FR 10175.

[3] *See* Securities Exchange Act Release No. 19884 (June 17, 1983). ("1983 Fee Proposal Release"). 48 FR 29088. File No. SR-NASD-83-13.

[4] *See* 1983 Fee Proposal Release, *id.*, 48 FR at 29087. The NASD's proposed subscriber fee was intended to recover the costs of operating the NASDAQ system.

[5] *See* Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 15, 1983 ("Instinet Petition"). *See* Public File No. 4-256.

[6] *See* Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124.

[7] *See* Securities Exchange Act Release No. 20089 (August 16, 1983), 48 FR 38131.

[8] For a discussion of what comprised the proceeding's record, see Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 ("April Order").

[9] *See* April Order, *id.*

[10] *See* Securities Exchange Act Release No. 20873 (April 17, 1984), 49 FR 17653.

[11] *See* April Order, *supra* note 8, 49 FR at 17649. In support of this finding the Commission stated that it: "rejects the NASD's assertion that it should allocate to NQDS an equal share of each of the NASDAQ system's functions because the market makers who build the database depend on all the NASDAQ system functions. There is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without

Continued

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [12] of the finding made in the April Order related to costs of the NASDAQ query function. In urging reconsideration of this finding the NASD asserted that market makers necessarily query full quotation information offered through NASDAQ in deciding whether to maintain or change their quotation. Accordingly, the NASD argued that the query function was an essential part of the update function, and, therefore, Instinet's subscribers should bear a proportionate share of the costs related to the query function. The Commission denied the motion and held that the NASD had not advanced any new data or arguments to warrant Commission reconsideration of issues resolved in the April Order.[13]

On November 19, 1984, the NASD filed a second motion requesting Commission reconsideration of the query cost finding based on new evidence.[14] The evidence was derived in part from an NASD statistical study which indicated that 76.8 percent of queries directed to the NASDAQ system were made by market makers in stocks in which they made markets. The Commission denied the motion because the NASD had not demonstrated that there were reasonable grounds for its failure to produce this evidence prior to the April Order. The NASD also had failed to show that the proffered evidence was material to any of the findings contained in the April Order, as the Commission had considered and rejected arguments that the evidence was intended to support.[15]

On July 31, 1985, the NASD filed with the Commission SR–NASD–85–19, the proposed NQDS subscriber fee.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

The proposed rule change establishes a charge of $79.00 per month per subscriber terminal receiving NQDS information disseminated by a vendor. The purpose of the proposed rule change is the creation of a fee which accurately reflects the cost of collecting, processing and preparing the NQDS information for distribution to vendors and subscribers and is consistent to the fullest extent possible with the direction contained in the Commission's Order and sound cost accounting principles. The fee represents the cost of the information as is collected, processed and prepared for distribution through NQDS, derived on the basis of a functional analysis of the NASDAQ system, the derivation of cost pools attributable to segregable functions performed within the system and the allocation of these costs to the various services offered by NASDAQ which utilize the functions. These costs were in turn applied to the cost bearing units of sale of the information which are the average number of quotations each such service is capable of accessing.

The functional analysis performed by Coopers & Lybrand was the most comprehensive review ever performed on the inner workings and technical interrelationships of the functions and processes which occur within the NASDAQ system. The best available information was obtained or developed for use by Coopers & Lybrand in the conduct of its study of the system. All available resources were placed at its disposal. Based upon the analysis performed, Coopers & Lybrand independently established the cost basis and recommendation for adoption of the fee proposed herein.

The Commission's Order directed the Association to undertake an analysis of the NASDAQ system that would permit the allocation of costs to specific functions, i.e. collection, processing, validation, storage of quotations and retrieval of the information. The Commission further directed that the Association could recover through the NQDS fee only the costs of collecting, validating and preparing the information for shipment to a vendor, and certain storage costs, and that costs related to the Association's inquiry system, such as storing quotas for inquiry purposes and responding to inquiries or incremental capacity required for such, could not be considered in developing the fee. In sum, only the cost of those identified functions which in the opinion of the Commission were necessary to supply a vendor with the NQDS information could be taken into account in developing the fee with the remaining functions deemed to be disallowed costs. Recognizing the inherent difficulties in functionally allocating the costs of an integrated computer system, the Commission did not require the Association to prepare an economically perfect allocation of relevant costs, but only a reasonable allocation based on the best available information.

Consistent with the Commission's Order, the Association solicited proposals from several organizations believed qualified to perform the objective analysis called for by the Commission and selected Coopers & Lybrand to perform the study.

Coopers & Lybrand reviewed the Commission's Order with regard to the application legal parameters which were intended to guide the analysis of the system's costs and functions. Based thereon, Coopers & Lybrand conducted a study which assessed the regulatory economics applicable to the various market data services sold by the Association and its subsidiaries; applied sound cost accounting methodology to the collection and consolidation of the costs underlying those services; performed a functional analysis of the various system processes involved in the creation of those services, and developed a pricing methodology for application of the relevant direct and allocated costs to particular services. The conclusions outlined hereafter are primarily those of Coopers & Lybrand.

The initial functional analysis undertaken by Coopers & Lybrand sought to identify and measure the functions (collection, processing, etc.) identified by the Commission in its Order as those used to create the services offered by the NASDAQ

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any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NQDS fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." April Order, *id.*, 48 FR at 17649 n. 91.

[12] *See* motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984.

[13] *See* Securitie Exchange Act Release No. 21471 (November 8, 1984), 49 FR 45282.

[14] *See* Request for Reconsideration based upon New Evidence submitted by Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated November 19, 1984. The NASD also has filed in the United States Court of Appeals for the District of Columbia Circuit a petition seeking review of the Commission's orders issued in this proceeding. *See* NASD v. SEC, No. 85–1012 (D.C. Cir. filed Jan. 7, 1985).

[15] *See* Securities Exchange Act Release No. 21832 (March 8, 1985), 50 FR 10565.

system, i.e. Level 1, Level 2/3 and NQDS. In-depth interviews were conducted with management and technical personnel; detailed inspections were made of available system documentation, system statistics, program libraries and flow charts, and standard system measurement tools were utilized to monitor network traffic, CPU cycle time and other system performance statistics.

According to Coopers & Lybrand, this analytical approach was found to be incapable of yielding identifiable system resource use directly related to the functions contained in the Commission's Order. The analysis demonstrated that the NASDAQ System is a monolithic, fully integrated data collection and storage system which supports many different forms of access to a central database of information. As such, the underlying software processes which support the system could not be isolated and measured in a meaningful way given existing documentation and measurement tools. The NASDAQ system software was found to consist of over one thousand program modules and service routines which serve multiple purposes depending on the way they are combined. Unlike more modern computer systems, Coopers & Lybrand found that the NASDAQ system does not have incorporated within it the functional design techniques (including logical organization and available documentation) which would facilitate the isolation of internal functions and processes.

Precise identification of internal system functions, as suggested by the Commission, could be approached, if at all, only through a process of reverse engineering of the NASDAQ system. Coopers & Lybrand stated this would involve the examination of hundreds of programs and tens of thousands of instructions in order to develop an understanding of how they work in combination with each other in the system as it is configured. The inductive methodology encompassed by such an approach is believed by Coopers & Lybrand to be totally impractical because of the protracted period for completion and its estimated cost of approximately $1 million. Furthermore, it is the professional opinion of Coopers & Lybrand, that it is extremely uncertain such an approach could be successfully completed. In view of the foregoing, Coopers & Lybrand utilized an alternative methodology believed by it to be equally acceptable to analyze and develop a cost based pricing approach to NQDS service.

The alternative method of analysis involved tracking each of the different transaction types within each functional category of service (e.g. broadcast, query, update and NQDS) across the various physical system resources and measuring the workload imposed upon the NASDAQ system by each individual transaction.

Under this approach each type of identifiable transaction, irrespective of whether it utilized part or all of the system, was measured. The transaction measured system usage and formed, in combination with other transactions, the components which support a particular function, which in the case of NASDAQ services are the general broadcast function, NQDS broadcast function, query activity function and update activity function.

The individual transactions identified are the only differentiated and measurable factors within and across the system. NASDAQ services, such as Level 1, Level 2/3, and NQDS were found to have no independent or otherwise identifiable meaning within the system based upon the documentation and measurement techniques currently available. Rather, these services are only convenient methods of packaging and disseminating data resident in the NASDAQ database of information. Similarly the transactions themselves are not components *per se* of a particular service, but rather a particular function. These functions are not the sole components of any NASDAQ service but operate in combination with each other to create the individual services.

An example of the foregoing is illustrative. The basic query function embodies a number of individual transaction types which include NASDAQ bid/ask queries, NASDAQ/NMS bid/ask queries, NASDAQ volume queries, NASDAQ/NMS volume queries, market summary queries, index queries, news queries and miscellaneous queries. The update function embodies NASDAQ and NASDAQ/NMS quote updates, NASDAQ volume updates and NASDAQ and NASDAQ /NMS supervisory control transactions. The NQDS function encompasses only transactions that are relevant to the NQDS quote. Each separate transaction forms a logical component of either the query, update function or NQDS function. Each of these transactions have a measurable volume within the system. Similarly, each transaction makes measurable use of some or all of the three basic component resources of the NASDAQ system, i.e. the network/communications resource, the processor/CPU resource and the data storage resource. System statistics were compiled which identified the physical length of each transaction and the duration of occupancy of the transaction within a particular category of resource. Thus, the amount of network/communications resource was measured for those transactions drawing upon this aspect of the system by recording each message sent over the network during a test period and determining the type of transaction involved by means of its program identification number. The processor/CPU resource utilization was determined by measurement of the CPU cycle time and calculations of the mean number of input/output operations each transaction used in the processors. Data storage resource utilization was accomplished by the allocation of mass storage on the basis of a traffic analysis of transaction volume within each function.

Through this alternative method of measurement, Coopers & Lybrand was able to objectively identify the external processes of the NASDAQ system as represented by the transaction types making up the four major NASDAQ functions as well as those transactions and functions of non-NASDAQ services which have been measured and the costs of which have been excluded from the calculations relevant to the NASDAQ system. The resource occupancy measurement for these functions provided a strong, inferential view of what is functionally occurring within the NASDAQ system.

Coopers & Lybrand concluded that the measurement of individual transactions has objective reality and served as a basis for the assignment of cost in relation to the proportional use by any discrete transaction of particular system resources. Thus, Coopers & Lybrand gathered and consolidated all cost data applicable to the operation of the system. Seven distinct cost pools were created, which included the allocated costs of the network/communications, processor/CPU and data storage resources, and the allocated indirect costs for general and administrative expenditures, systems development expenditures and overhead expenditures. The seventh cost pool consisted of NASDAQ terminal costs but was excluded in its entirety from the calculation of transaction costs underlying the relevant NASDAQ services since these costs are recovered separately.

With respect to network/communications, processor/CPU and data storage cost pools, cost allocations were made for each resource on the

basis of the percentage of use of the individual transaction of the total use made of each particular resource. The total resource costs were then added together as were the total allocated costs for each resource for each transaction and the percentage of allocated resource cost to total resource cost was determined. This composite percentage represented an average resource utilization factor which was multiplied by each of the indirect cost pools to obtain the allocated indirect costs of each transaction. Thus the allocated cost for each transaction type is based upon the objectively measured use made of system resources.

Costs attributable to individual transactions are meaningless, however, absent recombination in a manner related to the categories of NASDAQ service dependent upon or supported by the transactions. The applicable transactions measured are not directly translatable into Level 1, 2, 3 or NQDS services. As noted above, Coopers & Lybrand established that the NASDAQ system is a monolithic integrated system, the purpose of which is the collection of data created by the processing of quotation updates to support a number of information products. As such, it constitutes a system whose primary function is that of maintaining a database of securities information. The transactions are physical operations drawing upon physical resources while the services represent access in one form or another to the information contained in the database. For example, a number of processes internal to the NASDAQ system have been clearly recognized as part of the broader process of collecting and processing quotation updates that simply cannot be measured on a transactional basis. These include verification, best bid/asked calculation, regulatory examination of locked markets, excess spread review, testing for quote reasonability of range and regulatory reporting. These internal pocesses cannot be separately identified, nor do they have any direct relationship to the services being sold. They are examples of the internal system processes which make use of the database in combination with other processes. This shared use of the database cannot be reflected in the measurement of a transaction which only demonstrates how long it took a transaction to go through the system and proportionately how much of the system's resources were used by the transaction. Thus, the transactional measurements do not take into account the access to the database or the internal processes required by the individual services. Rather, these processes and forms of access are shared between a number of functions supporting particular services with the result that they are primarily weighted toward and reflected in the query function as a result of the disproportionate volume of traffic in the transactions comprising this function.

The Coopers & Lybrand study approached this conundrum by developing a methodology of capturing the costs reflected by the various transactions and applying them in an appropriate fashion to the NASDAQ services supplied. Two standard cost accounting approaches that exist were considered for application to NASDAQ services; Job Order Costing which is the method used when each job or product is unique and its components are easily identifiable, and Process Costing which is the method used when there is mass production of functionally identical units. The Process Costing method was found to be the proper method of cost accounting to be applied to NASDAQ services because of the monolithic nature of the system and the inability to separately identify specific internal processes of the system such as those mentioned earlier in connection with updating quotations. Because the process costing methodology isolated costs of individual transactions underlying functions, and these functions were not directly translatable into services, further refinements to these functions were found to be required.

The refinements were based upon three basic assumptions. The first assumption, supported by the findings that the primary portion of the system traffic and resource utilization is for the query function which disproportionately incorporates shared processes in the cost, is that part of the cost of the query function should be included in the costs to be shared by all NASDAQ services. System statistics revealed that approximately 76% of query traffic originates from market maker terminals and goes against security records in which that market maker makes a market. This action of querying a security to review a market maker's own and competitors' quotes is an essential pre-activity in the process of quotation maintenance and update. It is important to note that query activity related to the update process is not made on a one-to-one basis, rather a number of queries may be made to review competitor's prices that result in the market maker deciding to maintain a particular price for a security. The continuous monitoring of the supply and demand situation within the marketplace is an important ingredient in the decision to maintain or update a securities price. Hence, queries constitute a correspondingly larger component of system traffic than the update. The essential nature of this pre-activityy is supported by the affidavits of market makers previously supplied to the Commission in connection with its reconsideration of the denial of the original NQDS fee. As a result of the actual use made by market makers of the query function in connection with their update activity, the costs of the queries arising from market maker activity should be included in the costs shared by all NASDAQ services.

The second assumption is that the basic product sold is access to information, created by continuous, logically inseparable processes within a monolithic system. The basic unit of sale for Level 1, 2, 3 or NQDS service is the quote, and this is the unit that must be used to transfer costs to the ultimate buyer of the NASDAQ services. Cost differentials between one NASDAQ service and another are solely determined by the number of quotes available under the packaging of that service. System statistics demonstrate that the average number of market maker quotes per security is approximately eight. Based upon the foregoing, the number of quotes accessible through each of the NASDAQ services is determinable. Level 1 offers a single bid/asked quotation equivalent to access to one quotation. Level 2, 3 and NQDS each access eight individual market maker quotes plus the best bid/asked quote derived therefrom resulting in a mean access capability to nine total quotes. The number of quotations accessible by each of the individual NASDAQ services were determined to be the appropriate cost bearing units of sale.

The third assumption is that market makers activity involved in entering and reviewing quotes is the key activity in creating the NASDAQ database and maintaining the NASDAQ marketplace. This market maker activity, and the query and update costs it represents, is a sharable component of the common costs of creating the information for sale.

It is essential to note that Coopers & Lybrand has stated that the foregoing assumptions are the foundation of the study. It has stated that a change or invalidation of these assumptions by the Commission would invalidate the study. Specifically, it stated that if the market maker query costs were to be backed

out of the common cost, the logic and integrity of the balance of the analysis would fail.

Proceeding on the foregoing assumptions, Coopers & Lybrand developed a unit pricing methodology for Level 1, 2, 3 and NQDS services. The product being sold was found to be access to the integrated NASDAQ database, with differentiation between the various services occurring primarily at the point of delivery. The only substantial differences found to exist in processing for Level 1, 2, 3 and NQDS services were the amount of data being transmitted and the form of the transmission (i.e. broadcast or screen display). Once accessibility is established by subscribing to a service, the number of physical accesses actually performed is immaterial. Access can be assumed to be continual, since broadcasts of Level 1 and NQDS information occur constantly and the entire database is continuously available for access from Level 2 and 3 terminals. The mechanics of delivery result in very small additional costs in the case of the Broadcast services, Level 1 and NQDS, and significant delivery costs for the delivery of Level 2 and 3 service over NASDAQ lines.

According to Coopers & Lybrand, cost based pricing requires identifying and using an objective and shared cost bearing unit of sale. To fairly apportion costs to products, it is customary to include the costs of all the processes which are involved in creating the product. As noted previously, NASDAQ Level 1, 2, 3 and NQDS services sell the same product, access to NASDAQ market data information. Therefore, a unit of information for cost application was required which varies quantitatively among the different services. The unit selected was the basic component of quotation information, with one unit attributable to Level 1 service and nine units attributable to Levels 2, 3 and NQDS service which were seen as functionally equivalent in terms of access to the database, since they enable access to all market maker quotations for a given security.

To establish the total costs for Levels 1, 2, 3 and NQDS service, it was necessary to further refine the seven functional cost pools defined by the costing analysis performed. In order to create the most objective assignment of cost by product, it was determined desirable to create individual cost pools specific to each service, common cost pools in which all services share on a proportionate basis, and assign cost to each unit of information sold, regardless of how it is sold. In conformance with this approach, cost pools for each NASDAQ product were created as follows—the sum of all costs attributable to NASDAQ functions for the period studied was determined. If all costs of operation were deemed sharable, this would be the common cost pool. They are not all sharable however. From this amount, the specifically allocated cost of the broadcast function and NQDS function were calculated but retained in the common cost pool. Based upon the assumption of shareability of market marker query costs (76% of such costs), 24% of the cost of the query function, representing non-market maker queries was removed from the common pool and included in the individual cost pool allocated to Level 2/3 service. The remainder represents the common cost pool to be shared among all services.

In order to establish a price with stability for a period of years, it was also necessary to define a factor over cost. This is necessary in order to yield an appropriate surplus for system maintenance and enhancement, response to technological change, the need for sophisticated backup facilities, and other growth requirements. Actual and budgeted cost data for NASDAQ show a growth rate which may be used to create that factor. Based upon the rate of growth of expenses, actual and budgeted, during the period 1982 through 1985, a continued growth rate of 15% was projected as being a conservative expectation over the next three to five years. In order to establish a price that will be reliable over this same period, it was determined that a factor of 50% should be added to the cost base for NASDAQ services for 1984. Barring extraordinary increases in costs for 1986 through 1989, the 50% over-cost pricing should enable NASDAQ to offset the effect of 15% compounded growth in its budget; however, even using this cost multiplier a deficit is projected if it is applied through a full five year period. This deficit will first occur in the fourth year and increase substantially in the fifth year. At the end of three years, projected revenues and expenses are about equal though there is a slight revenue shortfall. This would probably necessitate reevaluating the rate no later than after three years.

As stated, the pricing utilized to recover present cost and the anticipated growth in expenses must be stable. Therefore, a measurement would be required which would not be susceptible to great fluctuation over a reasonable planning horizon. The number of user terminals receiving NASDAQ services is large enough and a stable enough population for this purpose. The number of terminals combined with the units of information were found by Coopers & Lybrand to provide a pricing formula which accurately sets forth the true cost of providing any particular service to a subscriber.

Projections were made of the anticipated demand for the various services through terminal populations for each individual service. The number of units of information accessible by each such service were then multiplied by the number of terminals expected to subscribe to each such service which permitted the calculation of the total number of units of accessible information to be derived from the NASDAQ system over the period of the next three to five years.

In calculating the cost attributable to each service, Coopers & Lybrand utilized the following basic formulae: Common costs per unit of accessible information were determined by dividing the common cost pool by the total number of accessible units of information divided by twelve months. The individual costs per unit of accessible information were calculated by dividing the individual cost pool applicable to a particular NASDAQ function by the total number of accessible units in that function divided by twelve months. Total costs per unit were calculated by adding the common cost per unit plus the individual cost for those units. Finally, the price per unit was determined by multiplying the total cost per unit times 1.5 (50% growth multiplier). These calculations resulted in a NQDS cost based fee of $79.02. Therefore, the Board determined to impose a fee of $79.00 per month for NQDS services per terminal.

The fee proposed herein and the methodology employed is believed to be objective, logical, fully supportable and reasonable in application to assure, consistent with the mandate embodied in section 14A(b)(5) of the Act, the equitable allocation of reasonable charges for the services offered through the NASDAQ system. Similarly, it is believed that the methodology employed is fully consistent with the language of section 11A(c)(1) of the Act. The fee is believed to be consistent with the standard enunciated in section 11A(1)(C) that securities information processors be assured of obtaining such information as is prepared for distribution by the Association on fair and reasonable terms because no portion of the fee is required to be borne by any securities information processor receiving the NQDS information for purposes of redistribution of the

information to subscribers. The fee is believed to be consistent with the standard enunciated in section 11A(c)(1)(D) that for purposes other than distribution, exchange members, brokers, dealers, securities information processors and other perons be assured of obtaining such information as is published or distributed by the Association on terms which are not unreasonably discriminatory. To the extent this proposed fee results in a discrimination between the fees paid by NASDAQ subscribers and a securities information processor's subscribers, the Association believes that such discrimination has been effectively and improperly mandated by the Commission's Order. The Association continues to believe that the purpose of this section of the Act was to permit self regulatory organizations certain latitude in the formulation of its fees and not to authorize the Commission to foster discrimination in the fees paid by different categories of subscribers. The information accessible by a NQDS subscriber is the same information "as is published or distributed" by NASDAQ for the Commission's approved fee of $150 per month to its subscribers. There is no difference in the substance of the information received, only the persentation of the information, which has been reformatted at the option of the securities information processor to comport with its particular service.

B. Self Regulatory Organization's Statement on Burden on Competition

The Association had Coopers & Lybrand perform a functional analysis of the NASDAQ system and is submitting herein a proposed NQDS fee based upon that study only as a result of being directed to do so by the Commission in its Order dated April 17, 1984. That order is premised upon the Commission's determination that fees must be cost related based upon a functional analysis of the system in respect to those services of NASDAQ which are the subject of competition from private vendors. The Association continues to believe application of the existing Level ⅔ fee of $150 per month per subscriber of NQDS users is proper, consistent with the Act and does not represent an unjustified burden upon competition. In fact, the Commission had previously so determined when the fee was first adopted. However, to the extent the application thereof to NQDS users is considered an unjustified burden on competition because of the Commission's conclusion that NASDAQ is in competition with private vendors, such has been obviated by the proposal which would apply a new cost-based fee on the users of NQDS service.

Nevertheless, while the functional analysis was conducted in accordance with the Commission's Order and costs were likewise attributed to the various functions in determining the amount of the fee being filed herewith, the premise of the Commission's Order is in error because the intangible that was not taken into consideration by the Commission in making its "in competition" determination is that the Association is committed, as it must be as a matter of law, to make NASDAQ service available on a nationwide basis irrespective of the remoteness of the location to be serviced. Vendors of NQDS service do not have to do so and thus can maximize profits, and minimize expenses, by offering their services only in high concentration areas. They can also adjust their prices as deemed necessary on a subscriber-by-subscriber basis. Thus, irrespective of the level of the fee to be charged NQDS users, if lower than NASDAQ subscriber charges in any respect, and inappropriate burden is placed upon NASDAQ subscribers and a concomitent benefit given to subscribers of NQDS vendor systems. NQDS vendors are not, therefore, in competition with NASDAQ in the manner suggested by the Commission in its Order. The potential discrimination in geographic availability and charges may result in significant competitive imbalances between subscribers to NASDAQ and NQDS services. Such competitive imbalances would be exacerbated by any greater differential between the fee applicable to NQDS and Level ⅔. Further application of the interim NQDS rate of $8.75 per subscriber terminal would result in magnification of these competitive disparities. In sum, the Commission had determined that NASDAQ fees must be regulated as if it were a monopoly, while its assumed monopolized market is in fact open to free and unregulated competition.

Nevertheless, while the NASD disagrees with and contests the premise of the Commission's Order, the fee is fully cost based and hence consistent with the Commission's Order and, therefore, does not impose an unjustified burden upon competition. It departs from the Commission's Order in connection with costs attributable to the query function in Order to maintain consistency with generally accepted cost accounting principles.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

The NASD's proposed rule change raises a number of issues under the Act regarding the dissemination of market information. These issues include, first, questions regarding the appropriate prices and terms that an exclusive processor of securities data can impose on vendors that may compete with the exclusive processor in the Terminal Service market. In this regard, Section 11A(c) of the Act provides that the Commission may, by rule, assure that "all securities information processors may, for purposes of distribution and publication, obtain [securities data made available by an exclusive processor] on fair and reasonable terms." [16]

Second, the proposed fee must be reviewed for whether such fee is fair and reasonable and is consistent with the Congressional mandate in Section 11A(c)(1) of the Act to assure "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." [17]

Third, the proposed rule change must be consistent with Section 15A of the Act. Specifically, the proposal must be consistent with:

- Section 15A(b)(5) of the Act, which requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls."

[16] Section 11A(c)(1)(C) of the Act.

[17] Section 11A(a)(1)(C)(iii) of the Act.

• Section 15A(b)(6) of the Act, which requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

• Section 15A(b)(9) of the Act, which requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in futherance of the purposes of [the Act].

In considering whether the NASD's proposed fee is consistent with these provisions of the Act, the Commission requests that commentators consider the proposal in light of the Commisison's previous determinations in this matter. Specifically, the Commission, in the April Order, determined that, "at least in the circumstance where an exclusive processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, the exclusive processor's fees should be based strictly on the expenses it incurs in providing information to vendors." [18] In this connection, the Commission stated that—

> The NASD may recover only the costs of collecting, validating, [footnote omitted] and preparing the information for shipment to Instinet. Costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing an NQDS subscriber charge. In addition, incremental capacity built into its computer and communications system [footnote omitted] necessary to operate an inquiry service, but not necessary for a quotation collection service, cannot be considered costs relevant to the NQDS service.[19]

The Comission also stated that, "barring demonstrable differences in cost, all subscribers to NASDAQ information through vendors other than NASDAQ should pay the same basic fee to the NASD whether they receive the NASDAQ Level 1 best bid and offer service or the Instinet full quotation service." [20]

In order to evaluate the issues raised by the NASD's proposed rule change, the Commisison requests that commentators, in addition to any general comments concerning the rule change, specifically respond to the following questions:

1. Would the proposed fee structure provide vendors' subscribers access to NASDAQ securities quotation information in a non-discriminatory manner at a cost which would not impose an unnecessary or inappropriate burden on competition?

2. Was the methodology used by Coopers & Lybrand to ascertain the costs associated with the NQDS reasonable?

3. By including NASDAQ market maker query costs in the formulation of the proposed fee, the method of establishing the fee appears to be inconsistent with the April Order. Nevertheless, how do commentators evaluate the reasons and methodology used by the NASD to include these costs in the proposed NQDS subscriber fee?

4. How do commentators assess Coopers & Lybrand's statement that if market maker query costs were backed out of common cost, the "logic and integrity of the balance of the [cost] analysis would fail"?

5. Should NASDAQ Level 2 and 3 services bear a heavier proportion of any particular cost pool identified by Coopers & Lybrand?

6. Should NQDS bear a heavier portion of any particular cost pool identified by Coopers & Lybrand?

7. Assuming that the NASD reasonably has calculated costs and constructed appropriate cost pools, would it be consistent with a cost-based methodology as opposed to a value-of-service approach to apportion nine times more common costs on NQDS because that service on average has access to eight more quotations than Level 1 service?

8. Are the assumptions underlying the 15% expected budget growth multiplier that was used in setting the proposed fee reasonable?

In order to assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 35 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–85–19.

Copies of the submission, all written statements with respect to the proposed rule change between the Commisison and any person, other than those which may be withheld from the public, [21] will be available for inspection and copying at the Commission's Public Reference Room.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated: August 30, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–21482 Filed 9–6–85; 8:45 am]

BILLING CODE 8010–01–M

[18] April Order, *supra* note 8, 49 FR at 17847.

[19] April Order, *id.*, 49 FR at 17858–59.

[20] April Order, *id.*, 49 FR at 17859.

[21] 17 CFR 240.24b–2.

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[CM–81882]

Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1986 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering programs under the Soviet and Eastern European Research and Training Act. All awards will be annual and based on an open, national competition among individual organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983, Pub. L. 98–164, Title VIII, 97 Stat. 1047–50.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1986 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by October 11, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of State, INR, Soviet-Eastern European Studies Advisory Committee, Room 6747, Washington, D.C. 20520.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the U.S. Secretary of State.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of State, INR, Soviet-Eastern European Studies Advisory Committee, Room 6747, 2201 C Street, N.W., Washington, D.C.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

The Soviet-Eastern European Research and Training Act of 1983 provides for U.S. Government assistance to develop and maintain a national capacity for advanced research and training in the field of Soviet and Eastern European studies by authorizing support for graduate training, advanced research, public dissemination of research data and results, contact and collaboration among government and private specialists, and acquisition by specialists of first-hand experience in the Soviet Union and the countries of Eastern Europe.

The *purpose* of the program and eligibility requirements are set forth in the Act, Pub. L. 98–164, Title VIII, 1047–50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, shall approve policies and shall make final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct national programs in the field of Soviet and Eastern European and related studies furthering the goals of the Act as follows:

(1) Programs of support for research on the Soviet Union and Eastern Europe at the postdoctoral or equivalent level, such research to be conducted, on a shared-cost basis by the sponsoring organization/institution and the government, through American institutions of higher education or not-for-profit corporations;

(2) Programs offering graduate, postdoctoral, and teaching fellowship support for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted on a shared-cost basis by the sponsoring organization/institution and the government, at American institutions of higher education;

(3) Programs to carry out advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe, and to facilitate access for American specialists to research facilities and resources in those countries;

(4) Programs to facilitate dissemination of research methods, data and findings in Soviet Union and Eastern European studies. Dissemination would include publication of papers, speeches, conference proceedings, the holding of meetings, funding of serial publications, bibliographical materials, etc.; and

(5) Programs to facilitate research collaboration among specialists and between government and private researchers in the field of Soviet and Eastern European studies and by conducting seminars, conferences, etc.

To be eligible for consideration, proposed programs must be national in scope as regards the constituencies to be served, and the competitions to be held in making awards. Local or regional programs having a demonstrable national impact are eligible. However, it is not intended to consider applications from individuals to further their own training or research, or from institutions or organizations proposing programs that do not meet the stipulated criteria for national scope.

In making its recommendations, the Committee will seek the development of a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced effort which, over the life of the Act, will ensure attention to all the countries of the area, though with emphasis on the USSR. In choosing programs to recommend for funding it will seek to foster interdisciplinary studies and the development of secondary competences. Special emphasis will be placed on those disciplines and topics where the existing base of expertise most needs strengthening in the light of national needs. In this context, emphasis will also be given to innovative programs.

Part III

Available Funds

Congress has renewed its Title VIII funding for Fiscal Year 1986 for $4.8 million; actual awards will be based on the State Department appropriations bill still in Congress.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 pages, double-spaced with a 1 page executive summary, a budget, and vitae of professional staff.

Budget

Applicants should familiarize themselves with OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education . . . Uniform Administrative Requirements," and indicate or provide the following information.

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) Include a budget request containing total amount, a detailed program budget, and a detailed administrative budget listing direct administrative expenses and indirect costs. *NB* Indirect costs are limited to 10 percent of total grant agreements.

(3) Include the applicant's cost-sharing proposal, if applicable, containing appropriate details/cross references to the requested budget.

(4) Whether payment is requested on a reimburseable basis or by advance methods; re the latter, for grants above $120,000, advance funds will be made through a letter of credit, but if less than $120,000, advance of funds will be made by Treasury checks through wire transfers.

Applicants should also include the organization's most recent audit report (the most recent U.S. Government audit report if available) and the name,

address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Advisory Committee will evaluate applications on the basis of the nature and extent of the applicant's experience in administering programs of this kind in the Soviet-Eastern European field (35 points); their responsiveness to the objectives set forth above in *Part II. Program Information* (35 points), the quality of applicant key personnel and the adequacy of supporting resources (15 points), and budget and cost effectiveness (15 points).

Further Information

For further information, contact Paul K. Cook, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR, Department of State, Room 6747, Washington, D.C. 20520. Telephone: (202) 653–5144 or (202) 647–2800.

Dated: August 28, 1985.

Paul K. Cook,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 85–21470 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–32–M

[CM–8/880]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on October 31, 1985, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting is to complete preparations for the 14th Session of the Assembly of the International Maritime Organization (IMO) which is scheduled for November 11–22 in London. In particular, the SHC will discuss the development of the U.S. position dealing with, inter alia, the following topics:

Reports of the various Committees;
Long-term work plan;
Relations with the U.N. and the specialized agencies;
Status of conventions.

Members of the public are invited to attend up to the seating capacity of the room.

Interested persons may seek information by writing to Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street, SW., Washington, D.C. 20593, Telephone (202) 426–2280.

Dated: September 2, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85–21464 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–07–M

Shipping Coordinating Committee; Two Meetings

The Shipping Coordinating Committee will conduct an open meeting on September 23, 1985 at 9:30 a.m. in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting is to review the results of the 54th Session of the International Maritime Organization (IMO) Legal Committee, and to consider the U.S. position for the 55th Session, to be held in London on October 7–11, 1985.

The agenda for the meeting includes the following topics:

Revision of the 1910 Convention on Salvage and Assistance at Sea, and related issues;
Proposals to amend the 1969 Intervention on the High Seas Convention;
Issues relating to the draft Convention on Noxious and Hazardous Substances (NHS);
The draft Convention on Maritime Liens and Mortgages;
A work program for the Legal Committee for 1986–87 and a long-term work program.

Members of the public are invited to attend up to the seating capacity of the room.

For further information, contact Captain F.F. Burgess, Jr., U.S. Coast Guard (G–LMI), Washington, D.C. 20593, Telephone (202) 426–1527.

National Committee for the Prevention of Marine Pollution

The National Committee for the Prevention of Marine Pollution (NCPMP) will conduct an open meeting at 9:30 AM on November 21, 1985 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting is to complete preparations for the 22nd Session of the Marine Environment Protection Committee (MEPC) which is scheduled for December 2–6, 1985 in London. In particular, the NCPMP will discuss the development of the U.S. positions dealing with, inter alia, the following topics:

Uniform interpretation;
Oily-water separators and monitoring equipment;
Harmonized system of survey and certification;
Enforcement of pollution conventions.

Members of the public are invited to attend up to the seating capacity of the room.

Interested persons may seek information by writing to Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street, S.W., Washington, D.C. 20593, Telephone (202) 426–1527.

Dated: August 27, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85–21465 Filed 9–6–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/884]

Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 12, 1985 at 10:30 a.m. in Room 5941, Department of State, 2201 C Street, NW., Washington, DC. Due to the need for immediate advice and the conflict of schedules of public members to a later meeting time, we are not providing the normal two-week advance notice.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on Telecommunications Development will review issues related to and concerning the improvement or expansion of telecommunications in developing countries.

The purpose of the meeting on September 12 is to discuss issues related to the proposed ITU Centre for Telecommunications Development. The Ad Hoc Group will make recommendations on possible U.S. positions regarding the Advisory Board of the Centre and a preparatory meeting of donor countries on the Advisory Board.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion subject to instructions of the

Chairman. Admittance will be limited to seating avilable. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend should so advise Mr. Barbely, Department of State; telephone (202) 632-5832. All attendees must use the 21st Street entrance to the building.

Dated: September 4, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85-21558 Filed 9-6-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Application of Las Vegas Express Airlines, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 85-9-5) Docket 42715.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Las Vegas Express Airlines, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATE: Persons wishing to file objections should do so no later than September 16, 1985.

ADDRESS: Objections and answers to objections should be filed in Docket 42715 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-5 is available from the Documentary Services Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85-9-5 to that address.

Dated: September 3, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21430 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-9-4; Docket 42668]

Application of Las Vegas Express, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-9-4) Docket 42668.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Las Vegas Express, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than September 16, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42668 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Office of General Counsel, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-7631.

Dated: September 3, 1985.

Jeffrey N. Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21429 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-62-M

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB July 22, 1985—August 16, 1985

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period July 22, 1965—August 16, 1985 to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from July 22, 1985-August 16, 1985:

DOT No: 2602
OMB No. 2132-0520
By: Urban Mass Transportation Administration
Title: Section 19 (EEO) as it Applies to UMTA Grant Programs
Form: None

Frequency: Annually
Respondents: State or local governments and businesses or other for-profit organizations.
Need/Use: The data derived from written EEO and affirmative action plans will be utilized by the UMTA Office of Civil Rights in monitoring the transit properties' compliance with applicable EEO laws, rules, regulations, and statutes. The purpose of this monitoring and enforcement activity is to ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

DOT No: 2603
OMB No. 2133
By: Maritime Administration
Title: Determination of Fair and Reasonable Rates for the Carriage of Bulk Preference Cargoes
Forms: None
Frequency: On Occasion
Respondents: Ship Owners, Ship Operators
Need/Use: To collect vessel voyage data to enable MARAD to provide fair and reasonable rate guidelines to Federal shipper agencies.

DOT No: 2604
OMB No: 2115–0503
By: U.S. Coast Guard
Title: Plan Approval and Records for U.S. Vessels Carrying Oil in Bulk
Forms: None
Frequency: Recordkeeping and on Occasion
Respondents: Vessel Operators
Need/Use: This information collection is needed to ensure that:
(1) Sufficient information is available to the Coast Guard to determine that a vessel is complying with regulations;
(2) Sufficient information is available to vessel operating personnel for safe operation of the vessel and the equipment; and
(3) A means is available to appeal Coast Guard decisions.

DOT No: 2605
OMB No: New
By: Research and Special Programs Administration
Title: Evaluation of Training Programs for Incident Prevention and Response
Forms: Training, Response, and Planning Evaluation
Frequency: One time
Respondents: State and local governments; Businesses or other for-profit organizations; Federal agencies; non-profit institutions; and small businesses
Need/Use: Needed by the Materials Transportation Bureau to evaluate needed training programs for incidents prevention, response, and transportation of hazardous materials under Congressional mandate of Pub. L. 96–559.

DOT No: 2606
OMB No: New
By: Research and Special Programs Administration
Title: Bulk Packaging and Miscellaneous Proposals
Forms: None
Frequency: On Occasion
Respondents: Bulk shippers of hazardous materials
Need/Use: To alert emergency response and transportation personnel of bulk containers containing hazardous materials and need for special handling and proper response in case of an incident involving the hazardous materials.

DOT No: 2607
OMB No: 2120–0034
By: Federal Aviation Administration
Title: Medical Standards and Certification—FAR 67 Cooperative Shippers Association
Forms: FAA Form 8500–7, FAA Form 8500–8, FAA Form 8500–14, FAA Form 8500–20
Frequency: On Occasion
Respondents: Individuals
Need/Use: To determine if applicant is medically fit to perform aviation duties.

DOT No: 2608
OMB No: 2125–0034
By: Federal Highway Administration
Title: Certification of Enforcement of Vehicle Size and Weight Laws
Forms: None
Frequency: Annually
Respondents: State highway agenices
Need/Use: For FHWA to obtain information from States to support an annual certification of size and weight law enforcement as required of the States by 23 U.S.C. 141.

DOT No: 2609
OMB No: 2106–0006
By: Office of the Secretary
Title: Part 323—Terminations, Suspensions or Reductions, Suspensions or Reductions of Air Service
Forms: N/A
Frequency: On Occasion
Respondents: Air Carriers and State and Local Governments
Need/Use: Required to inform DOT and community when an air carrier intends to terminate, suspend or remove air service below a community's essential air service level.

DOT No: 2610
OMB No: 2130–0035
By: Federal Railroad Administration
Title: Railroad Operating Rules
Forms: None
Frequency: On Occasion
Respondents: Railroads
Need/Use: FRA uses this information to determine the condition of operating rules and practices with respect to trains and the instructions that railroads provide to their employees.

DOT No: 2611
OMB No: 2130–0500
By: Federal Railroad Administration
Title: Accident/Incident Reporting and Recordkeeping Requirements
Forms: FRA–F–6180.45; FRA–F–6180.54; FRA–F–6180.55; FRA–F–6180.55A; FRA–F–6180.56 and FRA–6180.57.
Frequency: On Occasion; Monthly; Annually
Respondents: Railroads
Need/Use: FRA needs this information to identify hazardous conditions on the railroad and uses it to assure compliance with the Railroad Safety Act.

DOT No: 2612
OMB No: 2130–0526
By: Federal Railroad Administration
Title: Control of Alcohol and Drug Use in Railroad Operations
Forms: FRA–F–6180.73 and FRA–F–6180.74
Frequency: On Occasion
Respondents: Railroads
Need/Use: The Federal Railroad Administration and railroad industry will use the information to determine the extent of the alcohol and drug program and to curtail any wide-spread use.

DOT No: 2613
OMB No: 2115–0043
By: U.S. Coast Guard
Title: Plan Approval and Records for Load Lines
Forms: LL 9–A, LL 10–A, LL 18–E, LL 40–A, LL 101–A
Frequency: On Occasion/Anually
Respondents: Owners of merchant vessels over 150 gross tons or 79 feet long engaged in commerce on international or coastwise voyages
Need/Use: This information collection requirement is needed and used to: (1) Provide vessel owners procedures for obtaining load line certificates; (2) determine if the vessel complies with the minimum design standards prior to certification; (3) ensure continued vessel compliance with design requirements after certification; (4) allow masters to continue to operate their vessel in compliance with the load line regualtions; and, (5) prove

noncompliance in case of delinquent vessels.

DOT No: 2614
OMB No: After consolidation 2132–0502
By: Urban Mass Transportation Administration
Title: Sections 3 and 9 Urbanized Area Capital Assistance Program
Form(s): N/A
Frequency: Varied (annually/quarterly)
Respondents: State and local governments
Need/Use: The respondents are State and local government entities responsible for public transportation. The reports are usually submitted to the cognizant Regional program office to determine the applicants eligibility for funding and subsequently thier progress in implementing and completing project activities. The data ensures compliance with provision of the UMTA Act and OMB Circular A–102

DOT NO: 2615
OMB NO: 2132–0008
By: Urban Mass Transportation Administration
Title: Section 15 Reporting System
Forms: UMTA 2710 Series
Frequency: Annually
Respondents: State and local governments; businesses or other for-profit organizations
Need/Use: Section 15 of the Urban Mass Transportation Act of of 1964, as amended, mandates a uniform system of accounts and records and a reporting system for mass transit operators to enable the operators to compare performance with peers and to assist local, State, and Federal government and the general public in setting policy and in making investment decisions.

Issued in Washington, D.C. on August 29, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85–21432 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–62–M

Fitness Determination of Big Island Air, Inc. d.b.a. Big Island Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85–8–84, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Big Island Air, Inc. d.b.a. Big Island Air is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, and serve them on all persons listed in Attachement A to the order. Responses shall be filed no later than September 21, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590 (202) 755–3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–8–84 is available from the Documentary Services Division, Room 4107, 400 7th Street SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85–8–84 to that address.

Dated: August 29, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–21431 Filed 9–6–85; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. IP85–13; Notice 1]

Motor Vehicle Safety Standards; Union City Body Company, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Union City Body Company, Inc., Union City, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1318 et seq.) for a noncompliance with 49 CFR 571.302, "Flammability of Interior Materials." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Federal Motor Vehicle Safety Standards (FMVSS) No. 302 requires that interior materials must have horizontal burn rates no greater than 4 inches per minute. Section S5.2.2 of this standard requires that the test specimen be cut in the direction that produces the most adverse test results, and the specimen be oriented so that the surface closest to the occupant compartment air space faces downward on the test frame.

Through a misinterpretation, Union City Body Company tested samples of seat fabric oriented so the surface closest to the occupant compartment air space faced upward instead of downward. This orientation produced burn rates ranging from 1.7 to 2.9 inches per minute—well within the 4 inch per minute specification. When the test were repeated with the surface closest to the occupant compartment air space facing downward, burn rates ranging from 4.5 to 5.4 inches per minute were obtained and the material was determined to be out of compliance. The petitioner states that new complying material was obtained and production resumed on July 15, 1985. This apparent noncompliance affects 5,808 vehicles produced from 1981 through July 8, 1985, which are owned and operated by United Parcel Service (UPS).

Union City Body Company argues that the noncompliance is inconsequential as far as vehicle safety is concerned because (1) the noncompliance is marginal, (2) UPS vehicles involved are designed for occupancy by only a driver, (3) these UPS vehicles are destroyed at the end of their service life (4) very little material is exposed when the seat is occupied by the driver, with the seat back and cushion area being approximately 16 by 17 inches, and (5) all units carry a 5–BC fire extinguisher.

Interested persons are invited to submit written data, views and arguments on the petition of Union City Body Company, Inc. described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Robert Williams and Taylor Vinson, respectively.

Comment closing date: October 9, 1985.

(Sec. 102, P.L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 3, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR. Doc. 85-21373 Filed 9-6-85; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 174
Monday, September 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:57 p.m. on Friday, August 30, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Moncor Bank, National Association, Hobbs, New Mexico, which was closed by the Senior Deputy Comptroller for National Operations, Office of the Comptroller of the Currency, on Friday, August 30, 1985; (2) accept the bid for the transaction submitted by United Bank of Lea County, Hobbs, New Mexico, a newly-chartered State nonmember bank; (3) approve the applications of United Bank of Lea County, Hobbs, New Mexico, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Moncor Bank, National Association, Hobbs, New Mexico, and for consent to establish the three branches of Moncor Bank, National Association as branches of United Bank of Lea County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting purusant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21537 Filed 9-5-85; 11:15 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-21538 Filed 9-5-85; 11:15 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Friday September 13, 1985, at 9:00 a.m.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Technical Amendments to the Net-Worth Regulation.
Corporate Governance.
Securities Offerings.
Appraised Equity Capital.

Jeff Sconyers,

Secretary.

[FR Doc. 85-21494 Filed 9-5-85; 8:55 am]

BILLING CODE 6720-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 4, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, September 11, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Tammsco, Inc., Docket Nos. LAKE 81-190-M and LAKE 82-65-M. (Issues include whether the administrative law judge erred in vacating a citation issued for an alleged violation of 30 CFR 57.5-5, a mandatory standard dealing with control of employee exposure to airborne contaminants.)

2. Minerals Exploration Company, Docket No. WEST 81-189-RM. (Issues include whether employees of the Department of Labor engaged in improper actions, warranting dismissal of the proceeding, during the course of litigation.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission

may, subject to the limitations of 29 CFR § 2706.150(a)(3) and § 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–21576 Filed 9–5–85; 3:31 pm]

BILLING CODE 6735–01–M

5

OVERSEAS PRIVATE INVESTMENT CORPORATION

Metting of the Board of Directors

TIME AND DATE: 9:00 a.m. (closed portion). 10:00 a.m. (open portion). Tuesday, September 17, 1985.

PLACE: Offices of the Corporation, fourth floor Board Room 1615 M Street NW., Washington DC.

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9:00 a.m. to 10:00 a.m.):

1. Finance Project in Near Eastern Country.
2. Finance and Insurance Project in Near Eastern Country.
3. Insurance Project in Near Eastern Country.
4. Insurance Project in South American Country.
5. Legislative Renewal; Status Report.
6. China Projects: Status Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:00 a.m.):

1. Approval of the Minutes of the Previous Meeting.
2. Approval of Scheduled Board Meetings.
3. Allocation of Retained Earnings.
4. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 457–7015.

Elizabeth A. Burton,

Corporate Secretary.

September 4, 1985.

[FR Doc. 85–21532 Filed 9–5–85; 11:06 am]

BILLING CODE 3210–01–M

Federal Register

Monday
September 9, 1985

Part II

Environmental Protection Agency

40 CFR Parts 66 and 67
Assessment and Collection of Noncompliance Penalties; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 66

[FRL 2539-8(a)]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 28, 1980 the Environmental Protection Agency published rules for the assessment and collection of noncompliance penalties pursuant to section 120 of the Clean Air Act, 42 U.S.C. 7420. The penalty is designed to calculate the economic benefit enjoyed by a source that delays compliance with applicable legal requirements.

This final rule modifies the Section 120 regulations in three respects. The modifications respond to the decision and order of the D.C. Circuit in *Duquesne Light Co.* v. *EPA*, 698 F.2d 457 (1983).

First, the rule implements the statutory exemption for violations that result from a source's inability to comply for reasons entirely beyond its control by allowing a source to petition for exemption without prejudging what kinds of circumstances qualified for exemption.

Second, the rule provides for adjudicatory hearings in all cases addressed by section 120 without administrative denial of hearings for immaterial or insufficient contentions.

Third, the rule clarifies that in cases of subsequently-approved SIP revisions the statutory "period of covered noncompliance" terminates at the end of four months after submission of the SIP revision.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman, Office of General Counsel (202) 382-7624.

SUPPLEMENTARY INFORMATION: On July 28, 1980, EPA published rules for the assessment and collection of administrative noncompliance penalties under Section 120 of the Clean Air Act, 42 U.S.C. 7420 (48 FR 50086, 40 CFR Parts 66 and 67).

In a decision dated January 7, 1983, the D.C. Circuit upheld the EPA rules in all major substantive and procedural respects, *Duquesne Light Co.* v. *EPA*, 698 F.2d 457, but remanded three secondary aspects of the rule to EPA for further consideration. This rule responds to the order in *Duquesne*. It was proposed for comment on March 12, 1984 (49 FR 9236), with the exception of one additional change which is noted under Section 2 below.

The *Duquesne* court remanded for further consideration issues related to 1) implementation of the statutory exemption for sources whose noncompliance results from an inability to comply which is beyond the source's control; 2) implementation of the statutory provision for hearings upon receipt of a source's petition challenging a source's liability for a penalty or disputing EPA's recomputation (under 40 CFR 66.51(2)); and 3) the effect on the amount of a source's penalty of late EPA approval of a revision of the relevant SIP provision.

1. Implementation of the "Inability to Comply" Exemption

Section 120 exempts violations from penalty which (i) have been recognized [1] as resulting from the "inability" of the source to comply with applicable regulations, if (ii) the inability arose entirely "for reasons beyond" the control of the source. In the rule which the Court remanded for further consideration, EPA had listed seven categories which it considered constituted grounds for exemption.[2] The Court held that EPA could not limit the possible categories. It remanded for consideration of a rule that would allow a source to qualify for exemption whenever its inability to comply resulted from factors beyond its control.[3]

The rule allows a source to assert a claim for an "inability to comply" exemption without regard to whether the cause fits any preconceived category.[4]

2. Administrative Denial of Hearing

Section 120 requires EPA to "provide a hearing on the record" of any petition challenging EPA's issuance of a notice of noncompliance or claiming an exemption, section 120(b)(4)(5). It also authorizes EPA to recompute penalty amounts after "notice and opportunity for a hearing on the record", section 120(b)(8). Because of the administrative burdens in providing an adjudicatory hearing for all petitions whether meritorious or not, EPA regulations provided for administrative denial of hearings if (i) the petition presented no information "which, if true" would tend to disprove the existence of a violation, show entitlement to an exemption, or alter the amount of a penalty assessment [5], or (ii) the petitioner failed adequately to supplement the information in its petition after a request by EPA to do so, 40 CFR 66.41(a)(2) and (a)(3), 40 CFR 66.53(b).

The Court, however, found that the statute required hearings in all such cases.

Consistent with the Court's ruling, the rule requires EPA to provide a hearing upon receipt of petitions challenging a notice of noncompliance, claiming entitlement to an exemption or challenging EPA's recomputation of a source's penalty assessment, provided that EPA need not provide a hearing if and to the extent that it administratively grants the relief requested in a petition. The issue whether the petition presented any material factual issue would therefore be determined in the first instance on motion before an administrative law judge.

The rule published today includes two revisions to § 66.41(a)(4) which were not included in the proposed rule. These additional revisions are entirely consistent with and a logical extension of the revisions to § 66.41 already proposed. Consistent with the Court's ruling, the additional revisions to § 66.41(a)(4) taken together require EPA to provide a hearing, before denial of a petition, whenever petitioner fails to supplement his petition adequately after an EPA request so to do.

3. Subsequently-Approved Revisions to SIP Requirements

Section 120 imposes a penalty for violation of "applicable" SIP requirements, section 120(a)(2)(A). The pendency of proposed revisions to applicable SIP requirements does not, therefore, affect a source's liability for violations of existing SIP requirements. Upon EPA approval of the SIP revision, however, the prior SIP would no longer provide a basis for penalty assessment

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[1] To be eligible for an inability to comply exemption a source must have received a Section 113(d) order or EPA-approved judicial order authorizing delayed compliance. Section 120(a)(2)(B)(iv), 40 CFR 66.31(c), 698 F.2d 478.

[2] To establish whether the inability resulted from factors beyond a source's control, EPA required that the inability result from Act of God, fire, embargo, strike, capital shortage, unforeseeable equipment failure or failure of supply, 40 CFR 66.31(c).

[3] The Court specifically held, however, that "technological impossibility" did not constitute a basis for exemption, 698 F.2d 477.

[4] An alternative approach discussed by the Court would be to retain the seven categories but to allow sources to seek rule amendments (with retroactive effect) to establish new bases of qualification as needed, 698 F.2d 477. This approach, however, seems unnecessarily time consuming and cumbersome.

[5] Under the statute a source must compute a penalty upon receipt of a notice of noncompliance, Section 120(b)(4). EPA may accept or reject the source's computation, Section 120(b)(8). The regulations track these statutory requirements, 40 CFR 66.13(a)(1), 66.51(2).

as of the date of EPA approval of the revision.

Section 110 requires EPA to take action on proposed nonvoluntary SIP revisions within four months of submission to EPA, section 110(a)(2). For purposes of section 120, a similar four-month limit applies to voluntarily-submitted SIP revisions, 698 F.2d 471.

Were EPA to delay more than four months to act on a SIP revision which it eventually approved, EPA delay could result in a penalty amount larger than the penalty a source would owe had EPA acted within the four-month limit.

Apparently assuming that EPA claimed the right to collect a Section 120 penalty in such cases, i.e., for the period of EPA's delay past four months in cases of eventual EPA approval of SIP revisions, the Court remanded for reconsideration of the regulation in this respect, 698 F.2d 472.

One method to carry out the Court's ruling would be to abate the penalty for the period after four months of submission until EPA approval of the SIP revision. This approach, however, assumes that penalty payments are attributable to specific monthly periods rather than to a prorated portion of the entire period of noncompliance. Such an approach also involves unnecessary complexities: It cannot be known in advance whether a SIP revision will be submitted or whether EPA action will be delayed. This means that *any* Section 120 payments would have to be abated four months after the filing of a SIP revision if EPA had not acted by that time.

The final rule does not adopt the "abatement" approach. Instead, it adopts, as proposed, a "reconciliation" approach which recognizes that EPA approval of a SIP revision terminates the "period of covered noncompliance" which forms the basis for the penalty calculation.[6] It states that the final penalty adjustment will assume that the period of covered noncompliance in such cases ends on the date four months from submission of a subsequently approved SIP revision. As in all other cases, any overpayment would be refundable with appropriate interest, see 698 F.2d 484.

Response to Comments

EPA received seven comments on its proposed rule. None of the comments criticized EPA's proposal with respect to the first two modifications. Some of the comments criticized EPA's proposed approach to the modification relating to the effect of late-approved SIP revisions. These commenters argued that EPA's approach was inconsistent with the "abatement" approach described in the mandate of the *Duquesne* Court.

In its proposal, EPA acknowledged that its proposed approach differed from the "abatement" approach described by the *Duquesne court*. EPA believes that the *Duquesne court* was primarily concerned with ensuring that any EPA delay in acting on SIP revisions not result, unfairly, in larger penalty amounts in the case where (i) EPA eventually approves a revision to an applicable SIP and (ii) the source is in compliance with the revised SIP. The court's reference to "abatement" in EPA's view does not preclude use of equivalent and, in EPA's judgment, more workable approaches.

EPA believes that an abatement approach would introduce unnecessary uncertainty and complexity into calculating and collecting penalties. More generally, the abatement approach, if applied in this situation would single out for an anomalous "mid-course correction" the effect of one "error" (among all possible eventual "errors") in the initial computation. Under the existing regulations, all such errors are corrected in the reconciliation computation at the close of the period of covered noncompliance, with interest to be paid on any under- or over-payment.

EPA does not know in advance the outcome of a SIP revision. An abatement approach would therefore require (i) that all penalties be suspended by EPA (ii) through an intermediate agency action separate from the initial computation or final reconciliation, (iii) on receipt (or later) of the SIP revision.

The suspension would affect payments attributable to the entire period of covered noncompliance, not just to the period of delay to act on a SIP. This is because the penalty amount represents an aliquot fraction of the present value of delay for the entire period of covered noncompliance. In other words, the abatement approach does not allow EPA to discriminate, as the court may have believed it did, between payments attributable to any particular month or any particular portion of the period of covered noncompliance.

EPA's approach accomplishes the same result more efficiently than an abatement approach. By waiting until EPA knows whether the SIP revision is effective, it avoids interruption of penalty payments for cases in which pending revisions are eventually disapproved. It clarifies that—for purposes of Section 120 and in cases where EPA approves a SIP "late"—the period of covered noncompliance terminates at the end of four months from the date the SIP revision was submitted to EPA. Coupled with the existing provision for payment of interest, this approach puts the source in the same place as if EPA adopted the "abatement" approach. It is the same approach as that used for any source which, as it turns out, overpays as a result of information not known at the time of the initial calculation. Given that EPA "benefits" neither from the initial "error" regarding the length of the period of covered noncompliance nor from any EPA-caused delay to act on SIP revisions, it is just as fair, and it is simpler, to rectify this error, like others, through the reconciliation process.

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore to be accompanied by a regulatory impact analysis. Executive Order 12291 requires such an analysis if the regulation would result in 1) an annual effect on the economy of $100 million or more, 2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major. We expect that it will have little if any economic effect.

The regulation has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

This regulation is not expected, for similar reasons, to have significant effect on a substantial number of small entities as specified under Section 605 of the Regulatory Flexibility Act.

Lee M. Thomas,

Administrator.

May 2, 1985.

List of Subjects in Part 40 CFR 66

Administrative practices and procedures, Air pollution control, penalties.

Therefore, Title 40, Chapter 1, Part 66 is amended as set forth below:

[6] EPA's approval of the revision of the SIP terminates the "period of covered non-compliance" whether or not the source is in compliance with the new SIP. If the source is violating the new SIP, a new "period of covered noncompliance" would begin and would form the basis of a different penalty computation.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

1. The authority for 40 CFR Part 66 continues to read as follows:

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

2. Section 66.31 is amended by revising paragraph (c) to read as follows:

§ 66.31 Exemptions based on an order, extension or suspension.

* * * * *

(c) In any exemption claim based on paragraph (a)(4) of this section, the source owner or operator must demonstrate:

(1) That the source owner or operator or an affiliated entity in no manner sought, caused, encouraged or contributed to the inability; and

(2) That the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

* * * * *

3. Section 66.41 is amended by removing paragraph (a)(2), revising and redesignating paragraph (a)(4) as (a)(2), and removing and reserving paragraph (b) to read as follows:

§ 66.41 Decision on petitions.

(a) * * *

(2) The petition does not contain sufficient information to demonstrate that the source owner or operator is entitled to part or all of the relief requested. The Administrator shall specify what deficiencies exist and request that the source owner or operator supplement his petition within thirty days of receipt of that request. If the petition is not supplemented adequately within this time, or, if supplemented adequately, still fails to demonstrate entitlement to relief, the Administrator shall grant a hearing under paragraph (a)(3) of this section. Any supplemental material provided pursuant to the Administrator's request shall be evaluated as provided in paragraphs (a)(1) and (a)(3) of this section.

(b) [Reserved]

4. Section 66.53 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 66.53 Decisions on petitions.

* * * * *

(b) Grant a hearing to the extent he does not conclude that the petition is correct.

5. Section 66.71 is amended by adding paragraph (d) to read as follows:

§ 66.71 Determination of compliance.

* * * * *

(d) In the event that the applicable legal requirement (as defined in § 66.3(c)) the violation of which forms the basis for the penalty is superseded by another applicable legal requirement (as defined in § 66.3(c)) the owner or operator of a source liable for a noncompliance penalty under this part shall notify the Administrator in writing that the owner or operator believes that the applicable legal requirement is superseded and that the period of noncompliance covered by the notice of noncompliance is ended. The notice shall be accompanied by the legal arguments which the source owner or operator believes support such a claim. Within 30 days of receipt of a source owner or operator's notice, the Administrator shall determine whether the period of covered noncompliance is ended and shall notify the source owner or operator of this determination in writing. In cases where the superseding EPA-approved requirement was not approved by EPA within the time period required by statute, the period of covered noncompliance shall be deemed to have ended on the date when EPA under the statute should have acted.

6. Section 66.72 is amended by adding paragraph (d) to read as follows:

§ 66.72 Additional payment or reimbursement.

* * * * *

(d) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(d) that the period of covered noncompliance ended on the date the applicable legal requirement was superseded (or, in event of EPA delay past an applicable statutory deadline, on the date the applicable legal requirement would have been superseded if there had been no delay past the statutory deadline), the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and Manual together with data necessary for verification. The revised calculation shall include interest on any underpayment. Paragraphs (b) and (c) shall apply to calculations submitted under this paragraph.

7. Section 66.81 is amended by revising paragraph (a)(5) to read as follows:

§ 66.81 Final action.

(a) * * *

(5) A notice of denial of a petition for reconsideration under §§ 66.71 or 66.73.

* * * * *

[FR Doc. 85-21101 Filed 9-6-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 66 and 67

[FRL-2539-8]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 28, 1980, the Environmental Protection Agency promulgated rules for the assessment and collection of noncompliance penalties pursuant to Section 120 of the Clean Air Act, 42 U.S.C. 7420.

This rule modifies the Section 120 penalty computation in three respects. Two of the changes revise the model to conform to recent changes in tax law and data sources. The third change revises the use of the 30-year time horizon to eliminate certain discontinuities.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman, Office of General Counsel, (202) 382-7624.

SUPPLEMENTARY INFORMATION: On July 28, 1980 the Environmental Protection Agency promulgated a mathematical model for penalty computations as part of the regulations implementing Section 120 of the Clean Air Act. (45 FR 50086) 40 CFR 66 and 67. Section 120 requires EPA to assess and collect an administrative penalty for noncompliance with specified legal requirements by specified sources. The penalty is to be equal to an amount calculated pursuant to EPA regulations and no less than the economic value of delay to the noncomplying source.

The model which EPA promulgated is described in a technical support document set out as Appendix A to the regulations, 45 FR 50122, 40 CFR Part 67 Appendix A. The method for calculating the penalty is described in an instruction manual set out as Appendix B to the regulations, 45 FR 50166, 40 CFR Part 67 Appendix B. The computer program embodying the model is reprinted as Appendix C to the regulations, 45 FR 50241, and is available from EPA.

Implementing the changes requires revision of the technical appendices

promulgated in 1980 rather than revision of the text of 40 CFR Parts 66 and 67. The changes implementing the proposal are embodied in appendices attached to and hereby incorporated within this notice. These appendices have been so extensively revised that it is not useful or even practical to identify specific language changes. The remainder of this notice is intended to describe the changes and their significance.

The proposed action was published for comment on April 23, 1984 (49 FR 17041). Comments received supported EPA's proposed action.

A. *Change in Time Horizon.* The penalty is designed to calculate the economic benefit enjoyed by a source while it delays compliance with applicable legal requirements. The rules established, among other things, a mathematical model to be used in computing the penalty owed by sources which have received a notice of noncompliance. The model is anomalous in that penalty computations increase in a discontinuous fashion rather than a continuous fashion throughout the period of time during which benefits from noncompliance are assumed to accrue. The discontinuity results from the combined effect of two model assumptions: the assumption that the time period during which benefits accrue is finite, or limited, and the (unstated) assumption that the last of an assumed series of replacements of pollution control equipment in certain circumstances should be treated mathematically as a cycle avoided rather than as a cycle deferred. The rule assumes, instead, that the benefit of deferring the last replacement, like that of deferring all preceding replacements, is equal to the value of alternative use of the money for the time remaining, if the time remaining is shorter than the useful life of the pollution control equipment.

The model computes the value of delaying compliance by comparing two cash flows. It compares the cash flow of expenditures that would have occurred had the source come into compliance on the date it received a notice of noncompliance (the "on-time" scenario) against the same cash flow deferred by the period of delay. The period of delay is not necessarily equal to, and is usually much shorter than, the period of time over which benefits accrue to the source for having delayed compliance. That disparity occurs because a delay in installing the equipment needed for initial compliance produces corresponding delays (with attendant savings) in installation of replacement equipment. The benefits of alternative use of the money during the period of delay accrue over a "time period" terminating with, or bounded by, a "horizon" representing the point after which fundamental economic conditions can no longer be assumed to remain the same.

EPA assumed this "time period" or "time horizon" to be equal to thirty years. (45 FR 50093 2nd col. July 28, 1980.) This assumption is consistent with conventional business economic theory. The model assumption of a finite, thirty-year time horizon represented a change from the proposed model, which assumed a non-finite horizon (44 FR 17339, March 21, 1979). The model assumptions in this respect were modified by EPA in response to industry, including utility, comments criticizing the assumption of a non-finite time horizon.

On September 26, 1980, the Utility Air Regulatory Group (UARG) petitioned EPA for reconsideration of the noncompliance regulations. The petition sought reconsideration, among other things, of the use of a finite thirty-year time horizon. UARG contended that the use of the horizon gave rise to anomalies in the penalty computation which were unjustified. It suggested using time horizons based, e.g., on the useful life of control or process equipment. On May 7, 1981, EPA denied UARG's reconsideration petition with respect to the anomalies described by UARG. EPA pointed out that such anomalies were "boundary-related," i.e., were a function of the introduction of a finite horizon, which industry comments had specifically requested. EPA also pointed out that UARG's proposed solution did not solve, but only relocated, the problem.

The problem arises because the model assumes that pollution control equipment has a fixed useful life and that the deferral of pollution control expenditures on replacement equipment defers not only the initial expenditure but also expenditures on replacement equipment. Part of the economic benefit of delay is, therefore, the benefit of delaying successive replacement cycles over whatever time horizon is chosen. If a non-finite time horizon is chosen, all replacement cycles are assumed to be delayed. No anomalies of the kind described by UARG result in this case. If a finite horizon is chosen, it is assumed that no purchase of replacement equipment will take place after the close of the "time horizon" and that only those cycles recurring before the close are delayed. This assumption results in anomalous discontinuities in penalty computation which are most pronounced where the end of the last replacement cycle approaches or coincides with the end of the time horizon.

Small changes in the length of a time horizon can lead to large discontinuous changes in the number of replacement cycles it includes. Take, for example, a hypothetical industry with a seven year useful life cycle. A company in that industry which complied "on time" would anticipate three full term replacements and 2/7 of a fourth replacement (in addition to the original installation) of equipment within the assumed 30-year time horizon.[1] If a similarly-situated competitor delayed compliance for two years, installation and replacement would be deferred by two years (compared to the "on-time" scenario). The last replacement would coincide with the end of the time horizon and would not be "counted." This is logical so far as it goes. A problem arises, however, when the next step is taken. The next step is to compute the value of delay by comparing the "on-time" case to the "delayed case." The two cases are no longer strictly symmetrical. As far as the model is concerned, the delaying source has benefitted from delay by deferring three replacement cycles and by *avoiding* the fourth, or final, replacement cycle. This asymmetry is the result of introducing a boundary, or limit, to the model. It can result in an artificial overstatement of the penalty amount.

EPA's change deals with this asymmetry as follows. First, it uses a "floating" 30-year horizon, i.e., to make a 30-year cash flow calculation for *both* the on-time and delay cases. This eliminates the possibility of an entire replacement cycle's being avoided merely by virtue of the intrusion of the time horizon. In the hypothetical illustration, it would "count" three full terms and two-sevenths of a replacement in both the "on time" and the "delayed" cases. The revision states, in effect, that the cash flows in the two cases are identical in all respects except real time. It will, to that extent, achieve the same effect as EPA's initial non-finite time horizon assumption.

EPA's change also assigns a value to the last replacement cycle proportioned to the time remaining in the cycle. In other words, the model now assumes that the value of delaying the last

[1] The EPA model assumes that the "salvage" value of the remaining useful life of the equipment at the end of the time horizon is zero. This assumption states nothing about the actual value of installed equipment since the purpose of the model is to calculate the value of failure to install equipment.

replacement cycle is the value of the cycle multiplied by a fraction which represents the years remaining (in the "on time" case) until the end of the time horizon divided by the years in a complete cycle. Treatment of the last cycle of depreciation and other costs which assume a complete life cycle are modified in a similar fashion.

B. *Change in Tax Treatment.* EPA's changes also reflect the passage of tax legislation which instituted an accelerated cost recovery system (ACRS) in lieu of the depreciation methods assumed in the model. The computer program is revised to assume either the use of rapid amortization (up to 85 percent of the asset's purchase price with the remainder subject to normal (ACRS) depreciation) or the use of ACRS to depreciate the entire value of the asset. The program selects the preferred method automatically. A second tax law change reflected in the proposal is the reduction of a firm's basis in the pollution control equipment equal to one-half of the investment tax credit taken where a firm takes the entire investment tax credit.

C. *Change in Source Data.* A third change relates to the specification of the computer data source for interest rates in industrial development bonds. This data source is one of the model "inputs" to determine the firm's cost of capital. The name of the source specified by EPA, *Bond Market Review,* has been changed to *Credit Market Comment.*

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore to be accompanied by a regulatory impact analysis. Executive Order 12291 requires such an analysis if the regulation would result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because we expect that it will have the effect, if any, of reducing the cost of penalties to affected sources.

This regulation has been submitted to the Office of Managment and Budget for review as required by Executive Order 12291.

This regulation is not expected, for similar reasons, to have significant impact on a substantial number of small entities as specified under Section 605 of the Regulatory Flexibility Act.

Dated: May 2, 1985.

Lee Thomas,

Administrotor.

List of Subjects in 40 CFR Parts 66 and 67

Administrative practice and procedure, Air pollution control, Penalties.

Therefore, Title 40 CFR Parts 66 and 67 are amended as set forth below.

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTIES

1. The authority citation for 40 CFR Parts 66 and 67 continues to read as follows:

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

2. Parts 66 and 67 are amended by revising Appendices A, B, and C as follows. (Appendix C as revised to correspond with Appendices A and B is available upon request from EPA. See note to Appendix C.)

Editorial Note:

The Environmental Protection Agency has advised the Office of the Federal Register that certain portions of Appendices A and B and the text of Appendix C may be omitted from Federal Register and Notice Publication on the ground that the omitted portions are not regulatory but are reproductions of publicly available documents or illustrative examples. The EPA has advised that it will make copies of these materials and of Appendix C available upon request from Director, Division of Stationary Source Enforcement, EN-341, 401 M Street, S.W., Washington, D.C., 20460.

Appendix A—Clean Air Act, Section 120, Noncompliance Penalties, Technical Support Document

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Section I—Introduction and Summary

The decision to install pollution control equipment implies a decision to commit financial resources, both initially in the form of capital investment and over time in the form of operating and maintenance expenses. While the acquisition of such equipment and its operation may result in improved environmental quality, it is unlikely to yield any direct economic benefit to the firm. If these financial resources were not required for pollution control equipment, they presumably would be invested in projects which would give a direct economic benefit to the firm. Thus, from an economic point of view, it is usually in the firm's interest to delay the commitment of funds for the purchase and operation of pollution control equipment.

Congress acted in 1977 to remove this incentive for noncompliance. The Clean Air Act ("the Act") was amended to require the imposition of penalties against firms not in compliance with pollution control regulations. These penalties must be based on the savings which accrue to a firm as a result of its noncompliance. Section 120(d)(2) of the Act states:

The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

(A) the amount determined . . . which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source."

The Administrator of the Environmental Protection Agency (EPA) is given responsibility for carrying out this provision. This appendix describes the economic basis and the mathematical formulation of a noncompliance penalty to be used in conforming with the requirements set forth in the Act. It is intended to serve three distinct purposes. First, it presents in broad, conceptual terms the nature of economic savings which can accrue to a firm through delayed compliance and the calculation of a penalty to remove those savings. Second, it provides a mathematical formulation of the noncompliance penalty and the assumptions used in deriving it. Finally,

it provides a complete specification of the sources of all the data needed to calculate the penalty for a particular incidence of noncompliance.

This appendix is not intended to serve as an instruction manual for persons calculating noncompliance penalties. A separate appendix issued by EPA serves that purpose.[1]

The Value of Delay

For the purposes of noncompliance penalties, the economic value, or savings, from noncompliance is defined to have two components: (1) the return which can be earned on the capital costs of pollution control equipment whose purchase has been delayed, and (2) the operating and maintenance costs avoided as a result of not having installed the equipment and the return on these savings. The first component, the capital cost savings, arises because owners of noncomplying sources have the opportunity to invest their funds in projects other than pollution control equipment during the period of delay. These other investments yield a monetary return during the period of delay and in the future equal to the firm's marginal return on capital; whereas, the purchase of pollution control equipment typically yields no direct monetary return. Thus a delay in compliance creates the opportunity for the owner of such sources to benefit by the amount of earnings which could be expected from alternative investments.

The second component of savings from delayed compliance is based on the operating and maintenance costs which would be incurred if the pollution control equipment were installed. These include the costs of labor, raw materials, energy and any other expenditures directly associated with the operation of the pollution control equipment. Unlike capital expenditures which are only delayed, delaying compliance allows these operating and maintenance expenditures to be avoided altogether and therefore the noncomplying firm benefits by their amounts in addition to the return that can be earned on these savings.

The Noncompliance Penalty

The two components of economic savings can be quantified using generally accepted economic and financial principles and estimates of such factors as equipment costs, financing costs, the inflation rate, and the length of the delay. These same techniques can then be employed to convert the savings into the basis for a penalty. As part of that conversion, an adjustment is made to incorporate the effect of capital and operating expenditures made after a notice of noncompliance has been given but prior to the time at which full compliance is achieved. The resulting penalty schedule appears as a series of quarterly payments which increase with inflation.

As implied above, the calculation of the penalty requires estimates of capital and operating costs, the rate of return on equity capital, and the inflation rate. Because these estimates are often made well in advance of the actual expenditures, they are subject to error. Once compliance has been achieved the capital cost is known and a better estimate of the operating and maintenance costs may be possible. More current estimates of the rate of return on equity capital and the inflation rate are also possible since more recent data on the rates will become available during the period of noncompliance. The Act calls for a recalculation of the penalty using these revised figures. A refund will then be paid or additional penalty payment assessed based on the new estimate of economic savings.

Plan of This Appendix

Following the introductory section, Section II contains a discussion of the legal and economic rationale for the procedures which have been adopted for calculating the penalty. Although an attempt has been made to present the discussion in such a way it can be understood by persons not familiar with this subject, the need to keep intact the integrity of the underlying financial theory requires that the discussion remain somewhat technical.

Section III contains a summary of the assumptions used in deriving the formulae and the reasons for adopting these assumptions. Section IV defines the various parameters included in the formulae and the sources which should be used to acquire the data needed to calculate the penalty in specific cases.

Finally, Section V presents the development of the formulae needed to compute the noncompliance penalty. The attachments describe the treatment of certain cases which require adjustment of either the data or the formulae.

Section II—Economic Savings and the Noncompliance Penalty

The costs associated with controlling pollution arise from many sources. The most apparent are the original purchase cost of the control equipment and the annual operating and maintenance expenditures. There may also be costs associated with the financing of the original purchase; for example, interest would be paid if a portion were financed with borrowed funds.

In addition to the direct costs, other financial impacts result from the purchase of equipment. Depreciation, for example, has the effect of reducing income tax liability in years subsequent to the original investment. Similarly, the original purchase may result in an investment tax credit, acting much the same as if a discount were given on the purchase price. Both of these have the effect of lowering the net cost to the firm.[2]

To calculate the economic value to a firm from delaying compliance with pollution control regulations, it is necessary to evaluate on a consistent basis the effect of all costs avoided or delayed, and related tax consequences, between the date by which compliance is required and the date on which compliance actually occurs. Because the various savings do not all occur at the same time, they must first be converted into values which are comparable with respect to the time-value of money (that is, the sooner a savings is generated, the more valuable it is). This conversion is accomplished by discounting all estimated future savings into their "present value" equivalents, a technique described below. Finally, the sum of the discounted values must be converted into series of level quarterly penalty payments as prescribed by the Act.

This section describes the process of translating the estimated costs and tax consequences associated with the purchase and operation of pollution control equipment into a penalty. That penalty reflects the savings that a firm realizes by delaying its compliance with pollution control regulations.

Pollution Control Cash Flows

The above discussion of the financial impact of delaying an investment in pollution control equipment was expressed in terms of costs, net or related tax consequences. A question arises as to the appropriate metric with which to measure these costs. The financial literature is clear on this subject: the appropriate metric is the incremental cash flow, positive or negative, associated with each cost.[3]

[1] Appendix B, Clean Air Act Section 120 Noncompliance Penalties, Instruction Manual.

[2] The term "firm" will be used to designate the owner of the pollution source. The discussion is equally applicable to sources owned by individuals.

[3] See, for example, Weston, J. F. and Brigham, E.F., *Managerial Finance*, The Dryden Press, Hinsdale, Illinois, 1975, pp. 275–281, or Van Horne, R.C., *Financial Management and Policy*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1974, pp. 78–81.

In order to measure each incremental cash flow properly, account must be taken not only of the initial effect but also of any offsetting tax effects. Available tax deductions can reduce the amount of income otherwise taxable and tax credits can reduce the amount of tax otherwise payable. These tax effects reduce the cash flow impact of an investment in pollution control equipment since they reduce the amount of tax payable in the presence of such expenditures. For example, payments for operations and maintenance are tax deductible. Therefore, the incremental cash flow resulting from such payments consists of the initial expense less any reduction in tax liability. For most corporations this means that the net cash flow resulting from tax deductible payments will usually be approximately one-half of the stated pre-tax cost.

There are three categories of cash flow arising from the purchase and operation of pollution control equipment. These are: (1) the initial capital outlay required to purchase and install equipment; (2) the subsequent monthly flows associated with depreciation and financing of the initial capital outlay; and (3) the subsequent monthly expenses of operating and maintaining the equipment. The first category is equal to the cost of purchasing or constructing the equipment, less the amount of any applicable investment tax credit. The investment tax credit constitutes a reduction in tax liability which has the effect of a discount on the purchase price. The second category of cash flow includes the tax shield from depreciation and interest as well as principal payments on debt and preferred stock. The third category is equal to expenditures for operation and maintenance less the applicable tax deductions. All of these cash flows are repeated when the equipment is replaced at the end of its useful life.

Discounting of Cash Flows

Once all incremental cash flows have been estimated, they must be converted into a set of values which reflect the timing of their occurrence. This procedure is necessary because two cash flows of equal dollar value occurring many years apart do not have equal impact on the firm. This differential arises because the firm can invest funds at some positive rate of return. If a dollar of expenditure can be postponed for one year, that dollar can be invested in the interim. At the end of the year the dollar of expenditure can be made and the return on the investment during the intervening period accrues to the benefit of the firm.

The technique used to compensate for this effect is called discounting. Discounting involves reducing the value of future cash flows to amounts which are equivalent in terms of their present value. As an example, suppose that a firm faced with a $100 expenditure could delay that expenditure by one year (assume no inflation). If the firm could invest money for that year at a 10 percent return, it would not need to put aside a full $100 to make the payment one year later. In fact, if it invested only $90.91 at a 10 percent return, that amount would grow to $100 in one year. Therefore, $90.91 is the present value, at 10 percent, of a $100 cash flow one year in the future.

Similarly, $82.64 invested at 10 percent would grow to $100 in two years (it would grow to $90.91 in one year and to $100 in the second year). Thus, $82.64 is the present value, at 10 percent, of a $100 cash flow two years hence. The present value of cash flows for other numbers of years in the future is found in a similar fashion. The formula is given by:

$$\text{Present value} = \frac{\text{Future value}}{(1+E)^{J}} \qquad (1)$$

Where:
E = The discount rate, expressed as a fraction (e.g., 0.10 corresponds to 10 percent)
J = the number of years in the future in which the cash flow occurs
Future Value = the value of the cash flow in the future

Applying this technique to all future pollution control cash flows converts each cash flow into its present value equivalent.[4] The sum of these individual values represents the equivalent cost, in terms of a single present value, of all future cash flows arising from the requirement to purchase and operate pollution control equipment.

The Value of Delay

For each polluting facility there is a date by which compliance should have been achieved. Under section 120 of the Act, as implemented, the period of covered noncompliance—i.e., the period over which a noncompliance penalty must be assessed—begins on the date on which a notice of noncompliance is received. Therefore, for purposes of calculating the penalty, it will be assumed that all capital expenditures should have been made by or on that date and that operating and maintenance expenditures should begin on that date.

The economic value of delay is assessed by comparing two sets of cash flows. The first consists of the flows that the firm would have experienced had it come into compliance on time. These include the flows attributable to the purchase of the original equipment as well as those associated with any future replacement cycles. The second set of flows consists of those which the firm will experience when, following the delay, it actually does come into compliance. This second set of flows will have three properties:

- It will be similar to the first set in that it will have the same sequence of capital interest and dividend payments, and so forth.
- It will begin at some time after the first day of noncompliance.
- The magnitude of each of its individual component flows will be greater than the corresponding flow in the first set to the extent that any given cost has inflated during the period of delay.

The present value of both sets of cash flows, as of the first day of noncompliance, can be calculated in the manner described above. The present value of the second set will be lower, reflecting the fact that delaying compliance yields a financial benefit to the firm. The economic value of delay is equal to the present value of the cash flows in the first set (on-time compliance) less the present value of those in the second set (delayed compliance) plus the present value of avoided operating and maintenance expenditures. This calculated value of economic savings in turn becomes the basis on which the noncompliance penalty is derived.

The Effect of Precompliance Expenditures

It is implicitly assumed in the above discussion that capital expenditures associated with delayed compliance were made in a single payment on the first day that the firm is projected to come into compliance and that no operating and maintenance expenditures were required prior to that time. The Act requires that the penalty take into account any expenditures on pollution control equipment made by the firm prior to the date the firm comes into compliance. The procedure used to account for these precompliance expenditures is begun by dividing the value of delay into its two components. The first component is the return earned on the capital costs of the pollution control equipment whose purchase has

[4] For a more thorough discussion of this concept see the capital budgeting chapters in the Weston and Brigham or Van Horne texts previously cited.

been delayed. The second component is the operating and maintenance costs avoided during the period of delay. An adjustment is made to each of these components of the penalty to account for the firm's precompliance expenditures.

To adjust the capital component, the capital component of each period's penalty is multiplied by a factor representing the proportion of the capital investment which is still to be made. The result is the adjusted capital component of the penalty. Thus the firm receives a credit (a reduction in the capital component of the penalty) in proportion to the amount of the capital investment in pollution control equipment already made.

The operating and maintenance component of the savings is adjusted to a value which is net of any actual operating and maintenance expenditures made during the period of noncompliance. The present value of the operating and maintenance expenditures made by the firm during the period of noncompliance, on an after-tax basis, are subtracted from the operating and maintenance component of the savings. The remainder is the adjusted operating and maintenance component of the penalty.

Conversion of Savings into the Noncompliance Penalty

The Act specifies that the total penalty assessment is to be paid in a series of equal quarterly payments. EPA interprets this provision to mean equality in real or constant dollar terms. The quarterly payments, therefore, should increase at the projected rate of inflation. When deflated, such penalty payments will be equal in real terms (that is, in constant dollars).

Once the present value of the savings from delay has been calculated and adjustments have been made to account for precompliance expenditures, the magnitude of the required quarterly payments may be determined. Since the period of noncompliance has been estimated,[5] the next step is to create a series of quarterly payments during this period (with each payment increasing at the rate of inflation) and with the present value of all payments summing to the economic value of delay which was just calculated. A formula for making this conversion is described in Section V.

Post-Compliance Settlement

The initial calculation of the noncompliance penalty is based on estimates; that is, an estimate of the costs of purchasing and operating the required pollution control equipment, an estimate of the schedule of precompliance capital and operating expenditures, and so forth. These estimates will have represented the best judgment of the firm's management or of independent consultants. The law, however, requires that a procedure be established whereby the penalty can be adjusted after compliance has been achieved to arrive at a final computation of the benefit of delayed compliance.

As described in the preceding discussion, the noncompliance penalty has two components, one related to capital costs and the other to operating and maintenance expense. The settlement process is similarly divided into capital and operating and maintenance components.

Once the capital equipment has been purchased and installed, the associated costs can be determined from the firm's accounting records. These, however, do not represent the costs which, had estimation been perfectly accurate, would have been used in the original penalty calculation. The cost used then was the estimated amount which would have been expended at the time the penalty was first assessed had the firm come into compliance on that date. The actual expenditure, coming at a later date, would reflect the impact of inflation. Therefore, for purposes of recomputing the penalty, the amount actually spent to comply must be deflated to remove the effect of inflation.

Similarly, the actual operating and maintenance costs cannot be determined until after the pollution control equipment has been in operation for some time. If a post-compliance settlement were to reflect the actual level of such costs most accurately, settlement could not take place for months or even years after compliance has been achieved. However, the Act requires settlement within six months of the date on which compliance is achieved. If at the time of post-compliance settlement it is apparent that the original estimate for operating and maintenance expense was inaccurate, an adjustment to the original savings calculation should be made by revising the operating and maintenance component.

The rate of return on equity capital and the rate of inflation are both estimated using historical averages. This is true of the shares of firm's capital structure represented by debt, preferred stock and common equity as well. More current information will become available during the period of noncompliance. Therefore, at the time of the post-compliance settlement, the historic averages will be updated using the current information available to provide more recent estimates of the rate of return on equity capital, rate of inflation, and the firm's capital structure.

These revised estimates—capital costs, operating and maintenance costs, the rate of return on equity capital, the inflation rate, and the firm's capital structure—and the actual schedule of precompliance expenditures are then substituted into the noncompliance penalty formula and a revised penalty series is calculated. The difference between the penalties actually paid and the revised amounts constitutes the basis for the post-compliance settlement. If the penalty has been overpaid, the excess will be refunded with interest. If it has been underpaid, the deficiency must be paid, also with interest. Under the Act, the rate of interest for underpayments and the rate of interest for overpayments will be set by the Secretary of the Treasury.

Section III—Assumptions Underlying the Penalty Calculation

The basic concept underlying calculation of the noncompliance penalty is that the economic savings resulting from delaying compliance with pollution control regulations should be removed. Implementing this concept requires several assumptions which were only implicit in the discussion in the previous section. These assumptions are explained in this section.

The calculation of the savings to a firm from delaying compliance is based on principles of financial and economic theory which are widely accepted or which have been selected as most appropriate for the purpose of calculating the penalty. The methodology itself is routinely used by firms making their own investment decisions. The assumptions involved are, for the most part, integral to the methodology itself. Similarly, the parameters and the data sources specified for such parameters are, with few exceptions, those which would commonly be employed by financial analysts.

1. *The relative mix of debt, preferred stock and common equity allocated to pollution control equipment is the same as that found in the firm's capital structure as shown on its balance sheet.*

On the balance sheet of any firm, total net assets, including net working capital, are exactly equal to total long-term financing. Any increase or decrease in net assets must be accompanied by a

[5] Any error in its estimation can be corrected at the time of the post-compliance settlement.

similar change in long-term financing. Under the allocation scheme assumed in the formulae, each asset is allocated a share of each source of long-term financing (long-term debt, preferred stock, and equity) proportionate to its share of the total net asset structure. Thus the sum of the shares of each source of long-term financing allocated to an asset will exactly equal the net book value of that asset. As the asset is depreciated, its share of each source of long-term financing declines but, other factors being equal, the *mix* of debt, preferred stock, and equity associated with that asset is unchanged.

Implicit in the assumed allocation system is the related assumption that the mix of total sources of financing is optimal and therefore constant over the life of any particular asset. The mix of financing employed by a firm may fluctuate on a year-to-year basis due to short-run discontinuities.[6] The mix may also be subject to long-term, secular changes due to gradual changes in the evaluation of management or financial markets as to what mix is optimal. During the intermediate period in which the useful lives of most assets fall, however, the mix of debt, preferred stock, and equity is assumed to be constant and unaffected by the addition or subtraction of any particular asset for which financial support is required. Given this assumption, it follows that an appropriate basis for allocating financial sources to particular assets is the *pro rata* basis used here.

An alternative and less desirable approach would be to assume that the addition or subtraction of pollution control equipment from a firm's total net asset structure will lead to a long-term change in the firm's financial structure. Using this approach, it would be appropriate to assign to an asset a pattern of financing different from that of the firm as a whole. In theory, financing could be provided solely by debt or by equity. As is discussed below, however, there is no reason to believe the nature of the asset involved will have a unique effect requiring financing different from other assets.

[6] Firms are often observed issuing new stock or selling bonds, but rarely do the two occur simultaneously. Thus, the capital structure of a firm may fluctuate from year to year. However, as discussed below, an accepted principle of financial theory is that each firm has an optimal financial structure which it aims to preserve over the long run. Obtaining long-term financing, such as a new debt or equity issue, is expensive and time-consuming and, therefore, firms tend to secure large amounts at one time. Thus, the firm's capital structure may fluctuate on a year-to-year basis, even though the long-term structure remains unchanged.

At one extreme is the assumption that the entire cost of the equipment is financed by equity, typically the most expensive source.[7] This assumption is based on the argument that pollution control equipment is not a "normal" investment, that is, an investment which holds the promise of creating future returns. It is the expectation of future returns which enables the firm to borrow since its capacity to earn returns and hence honor fixed debt obligations is not diminished. An investment which does not increase productive capacity, it is argued, does not add to the firm's ability to carry debt and would therefore be funded entirely from equity. This would tend to increase the cost of the pollution control investment and hence increase the penalty for delaying that investment.

This argument incorrectly assumes that non-productive pollution control equipment will generate no return to the firm. While such equipment does not generate a direct return, some of the cost will be passed through to the customers of the firm and will result in indirect revenue effects. Assuming (as the penalty provision seeks to ensure) that pollution control requirements are applied equally throughout the economy, there is no reason to believe that pollution control costs will not be eventually recovered through the increased price of the firm's products. Thus, the addition of pollution control assets need not in the long run alter a firm's debt-coverage capability.

At the other extreme is the assumption that the firm will finance the investment in pollution control equipment entirely with debt. The argument advanced for making this assumption is that a firm may issue new debt, often in the form of pollution control bonds or some other low-cost instrument, in order to raise the funds needed to purchase the pollution control equipment since debt is generally the least expensive form of financing. However, the fact that pollution control equipment may be financed with cheaper debt does not mean that the installation of such equipment will alter the perceived optimal capital structure of the firm. While pollution control equipment may create an increase in debt in the short run (because new debt can be acquired on favorable terms), the imbalance will eventually be rectified by increases in equity and/or reductions in other long-term debt. This is because the maximum amount a firm will be able to borrow depends on management's and lenders' perceptions of risk—that is, the underlying ability of the firm to support a certain proportion of debt. The addition of pollution control equipment should not change this perception of risk, other factors being equal. Thus, a temporary increase in debt would be eventually adjusted to the perceived optimal level.

[7] See, for example, Pogue, Gerald A., *Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments*, Environmental Protection Agency, EPA-230/3-76-001, November 1975, pp. 5-16.

The assumption of a constant financial structure over the life of an asset is therefore reasonable. Given this assumption, it is appropriate to assign to any particular asset a mix of financing which is identical to the overall mix which supports the total asset base. Hence, the *pro rata* system utilized in the penalty formulation follows directly. This assumption also represents middle ground between all-equity and all-debt financing with respect to the size of the resulting noncompliance penalty.

2. *Cash flows are discounted using the equity method.*

The rate used to discount future cash flows is the firm's return on equity. The equity discounting method is one of several approaches to evaluating capital investments which have been developed. The equity discounting method provides the advantage of explicitly recognizing the cash flows arising from debt and preferred stock financing by subtracting out all cash flows arising from debt or preferred stock financing. The remainder is discounted at the rate of return on equity.

This method of discounting explicitly recognizes the fact that debt is a fixed obligation. Regardless of the return earned on the project, the bondholders will receive the agreed upon interest and principal payments.[8] If a project earns more than the firm's required return, the bondholders will be given no share of the excess return, the bondholder will be given no share of the excess return. If a project earns less than the firm's required return, the bondholders' return is not reduced. The equity discounting method acknowledges these financial arrangements by explicitly accounting for interest and principal payments and then discounting the residual by the cost of equity.

The equity discounting method also holds constant the capital structure of the firm by recognizing that if a project earns less than the firm's required return, the shortfall must be funded using additional equity capital. Since the

[8] The only exception occurs if the firm declares bankruptcy and there are insufficient funds to repay the bondholders in full.

shortfall will reduce the retained earnings of the firm (an equity account), the firm must compensate for this reduction by eventually raising additional equity capital in order to keep a constant capital structure. If this shortfall were funded with both debt and equity, the portion of debt in the capital structure would rise. This implies that projects which result in inadequate returns would increase the debt capacity of the firm. Although, as discussed above, long-term debt capacity may not be lowered due to the undertaking of the pollution control investment, it is unlikely to increase as a result of this investment.

An alternative to the equity discounting method is the weighted average cost of capital method. This is the method often illustrated in introductory textbooks in corporate finance.[8] The method works by discounting incremental operating cash flows. That is, it computes cash flows resulting from investment in pollution control equipment without considering how the investment is financed. This rate is developed by computing a weighted average cost of capital with the weightings based on the overall capital structure of the firm.

While the weighted average cost of capital is the commonly accepted method for ranking investment alternatives, it is not the appropriate method to use in the special case of a required investment which yields no direct return to the firm. It ignores the fact that debt is a fixed obligation and that the agreed upon interest and principal must be paid, regardless of the inadequate earnings on the project.

3. *The noncompliance penalty is computed as a non-tax-deductible expense to the firm.*

In calculating the costs on which the penalty is based, the normal tax consequences of interest, depreciation, and operating and maintenance expenditures are taken into account. If the penalty were to be allowed as an expense for tax purposes, it would need to be adjusted upward such that its after-tax cost to the firm would be the amount calculated herein.

4. *Cash flows take place at the end of each month.*

While expenditures such as those for operating and maintaining equipment obviously are incurred throughout the course of the month, this assumption greatly simplifies the computation. Its effect is to lower the penalty slightly from the level it would have if these expenditures were assumed to be made on a continuous basis throughout the month.

Similarly, the cash flows arising from depreciation and those associated with long-term financing, both principal repayment and interest or dividend payments, are assumed to take place at the end of each month.

5. *The rate of inflation of pollution control operating and maintenance expenditures is the same as that for pollution control capital costs.*

The assumptions of the model regarding inflation of pollution control capital costs are described in Section IV in the discussion of the sources of data. Just as there is no index of pollution control capital costs, currently there is no identifiable index of pollution control operating and maintenance expense. The development of an index reflecting past increases in operating and maintenance expense would require substantial resources and would probably not result in a significant increase in the accuracy of the penalty. The inflation in operating and maintenance expenses will depend primarily on the inflation in labor and materials cost. As described in section IV, the index of inflation for pollution control capital costs includes both of these elements.

6. *The noncompliance penalty is calculated using a thirty-year time horizon.*

Firms benefit from delay both by having funds for other investments during the period of noncompliance and by displacing into the future the need to replace the pollution control equipment. In order to assess the benefit from a delay in compliance appropriately, all the case flows incurred over a specified time period must be considered.

A time horizon was selected as the thirty year period beginning at the time the notice of noncompliance is received. There exists no standard long-range planning horizon throughout all industries. However, thirty years is a common estimate, and it is a reasonable assumption for most industries. Many firms evaluate long-term, large scale investments such as pollution control equipment over a long-term planning horizon. Since the use of a thirty year planning horizon to calculate penalty amounts is consistent with the planning procedure of many firms, the use of a thirty year horizon will make the firm indifferent to the alternatives of ontime compliance or delayed compliance plus a penalty.

One alternative to the thirty year time horizon considered was the use of a specified number of replacement cycles. However, the use of a fixed number of replacement cycles has the disadvantage that it implies a vastly different time horizon for different industries. Suppose, for example, that a total of three life cycles of equipment were assumed. If the useful life in one industry were seven years while the useful life in another were 15 years, the planning horizon would be 21 years in one case and 45 in the other. This type of result argues against using the fixed number of replacement cycles approach.

The use of an infinite number of replacement cycles was also considered. The use of an infinite number of replacement cycles assumes an endless chain of similar pollution control devices will be installed on the underlying source of pollution. It can be argued that this is not the case since clean air regulations will change over time, technological advances in pollution control equipment will occur, and the underlying source of pollution will be retired, altered or otherwise modified. Thus firms are unlikely to consider costs incurred more than thirty years in the future in their decision to delay an investment in pollution control equipment.

The use of a single cycle was also considered. However, it is clear that a delay in the installation of pollution control equipment confers an advantage to the firm beyond the first cycle of equipment. Even though future requirements for pollution control are uncertain, it is likely that there will be requirements for pollution control beyond the first cycle of equipment. The use of a single cycle would therefore ignore the benefits that accrue to the firm from the delay of the purchase of future replacement equipment of whatever type. The use of a single cycle would understate the penalty and thus fail to capture the economic benefits enjoyed by the firm.

7. *Fractional capital investments are made when a replacement cycle would extend beyond the thirty-year horizon.*

Pollution control equipment is assumed to be replaced at the end of its useful life. This process repeats itself throughout the thirty-year planning horizon. In some cases, those in which the useful life divides evenly into thirty, the process will terminate automatically at the horizon. In other cases, however, the last replacement cycle would normally extend beyond the horizon. A proportionate capital expenditure will be assumed in these cases.

For example, suppose that pollution control equipment has a life of 14 years. The original equipment is assumed to be replaced in 14 years. At the end of 28 years, the firm is assumed to make a

[8] See Weston and Bringham, *op. cit.*

capital expenditure equal to 2/14 of the the original cost (adjusted for inflation).

If the final fractional cycle is greater than or equal to the depreciation life, normal depreciation schedules will be used. If the final fractional cycle is less than the depreciation life, the fractional capital expenditure will be depreciated on a straight line basis over the fractional cycle.

In all cases, full cycle or fractional cycle, the equipment is assumed to have no salvage value at the end of the cycle.

8. *The discount rate is not less than the inflation rate.*

If a firm has a choice between making an investment which yields a direct positive return and an investment which yields no direct returns, it would choose to make the former. The firm required to invest in pollution control equipment might seek to delay such an investment since the longer it delays, the longer it can keep its funds invested in projects producing positive returns.

However, when the inflation rate is greater than the discount rate, this benefit from delay may no longer exist. For example, assume that the firm could invest $1,000 in projects returning seven percent but that the pollution control equipment costs were increasing each year at an eight percent rate. If the firm delayed compliance one year it would have earned $70 on its investment but the pollution control equipment would cost $80 more. Under such circumstances, in terms of capital cost, the firm would be better off complying immediately if it planned to comply at some time.[10] A firm that nonetheless delays is most likely doing so because its own estimate of the returns available to it on alternative investments is higher than the discount rate used in computing the penalty or because the value of the operation and maintenance expenditures avoided during the period of delay exceeds the increase in the present value of the capital costs.

It is possible that the discount rate might be less than the inflation rate for some historical period in the data sources to be used for calculating noncompliance penalties. EPA considers such data an inappropriate basis for future expectations. Therefore, in the unlikely event that computations using the historical data yield a discount rate less than the inflation rate, the discount rate will be set equal to the inflation rate. A similar adjustment will be made, if necessary, in the post-compliance settlement.

Section IV—Definitions of Parameters and Sources of Data

Calculation of the penalty requires estimates of a large number of financial parameters, many of which are specific to the noncomplying firm. This section contains definitions of these parameters and sources from which their numerical values are to be drawn.

1. *Capital Investment Schedule.*

This schedule is an estimate of monthly expenditures to be made for purchase and installation of the required pollution control equipment. It includes not only direct purchase costs, including sales taxes, but also such expenditures as site preparation, engineering design, shipping costs, and installation expenses.

In the event that contracts have been signed or construction for purchase of the required equipment, they should be used as the basis for such costs. Other possible bases include engineering estimates, quotations from equipment manufacturers and, where no other data are avaible, reasonable estimates by the owner of the facility.

2. *Operating and Maintenance Expense.*

This parameter is an estimate of the monthly cost of operating and maintaining the required pollution control equipment. That is, this amount should represent the average monthly operating and maintenance expense the firm would have incurred in the initial year of compliance. There is a provision in the formulation which automatically adjust future months' operating and maintenance expense for anticipated inflation.

Losses in production capacity and incremental energy costs which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category. On the other hand, the value of any byproduct recovery resulting from such operating should be deducted. To the extent that these or other factors will result in the real cost of operating and maintenance varying over time, an estimaterd schedule of payments must be provided.

Sources of estimates for operating and maintenance expense include equipment manufacturers, engineering consultants and the owner of the facility. These estimates should include all recommended operating and maintenance procedures, training and planning costs, cost of warranties, recordkeeping and costs of monitors.

3. *Investment Tax Credit.*

This credit is a reduction in federal or state income taxes payable as a result of making qualified capital investments. It is equal to a specified percentage of the portion of the intitial capital costs which qualify under U.S. Internal Revenue Service (IRS) regulations. The investment tax credit is included in the formulation because it has the effect of reducing the cash outflow required to purchase the pollution control equipment.

The applicable percentage is given in the Internal Revenue Code as are the Criteria for qualifying investments. Further details are provided in Attachment B.

4. *Marginal Income Tax Rate.*

This rate is the fraction of the last dollar of taxable income which must be paid by the firm to federal, state and lcoal governments. It is the amount by which taxes would increase if taxable income were to increase. It is different than the average income tax rate—total income tax divided by taxable income.

The tax rates of the various levels of government are specified by statute and depend on the level of taxable income reported by the owner of the polluting facility. A formula for computing the marginal income tax rate for a firm subject to income taxation by more than one level of government is given in Attachment D.

The noncompliance penalty is based on the incremental savings from delaying investment in pollution control equipment. The tax effects will depend on the rate applied to the incremental cash flows—the firm's marginal income tax rate.

An alternative to using the marginal income tax rate would be to use the average rate. The advantage of using such a rate is that it can be calculated directly from data contained in the firm's financial statements. However, the use of an average rate would not result in a correct computation of the tax consequences of an incremental investment. It was therefore rejected as the appropriate tax rate.

5. *Inflation Rate.* This is the annual rate at which both capital and operating and maintenance costs are expected to grow. These cost increases are the result of inflation in various factors such as labor, capital goods and energy.

For purposes of computing the noncompliance penalty, the annual compounded change in the *Chemical Engineering* Plant Cost Inflation Index for the most recent 60 months of data is to be used as an estimate of the future rate increase in pollution control

[10] In some circumstances, there may still be a benefit to delay even if the inflation rate exceeds the discount rate. If the firm delays a sufficiently long period, the firm may avoid an entire replacement cycle.

expenditures.[11] The *Chemical Engineering* Plant Cost Index is based on a weighted average of four cost components: (a) fabrication and equipment, (b) engineering and supervision, (c) construction labor, and (d) building costs. The weight are determined by a survey of the chemical industry made by *Chemical Engineering* magazine. The cost components are derived from the producer price indices complied by the Bureau of Labor Statistics.

There is no widely available index of pollution control equipment costs as such. The *Chemical Engineering* index is based on factors which are clearly important components of such costs. The principle alternative considered was to use some broader and more universally recognized index, such as the GNP implicit price deflator. This was considered to be an inferior choice since it is based on a broad range of factors (food, housing, medical costs and so forth) only loosely related to the cost of pollution control equipment.

A problem with using any historical index to project the future is that changing conditions may make the estimates inaccurate. Using an inflation rate over the past several years as an estimate of the future rate may appear to be an example of such a problem. Offsetting this problem to a great extent is the fact that a similar approach is being used for the discount rate. Since the inflation and discount rates act in opposite directions with respect to pollution control cash flows (that is, the inflation rate is used to increase future values while the discount rate is used to reduce them), any error introduced by using an historic inflation rate is counteracted by using an historic return on equity as the discount rate. Furthermore, both the discount rate and the inflation rate will be updated using more current information at the time of post-compliance settlement.

6. *Discount Rate.*

This is the percentage rate to be used as the basis for discounting cash flows in future years. Such discounting is necessary to convert cash flows occurring in different years into present values. The source of the discount rate is the industry average return or the all-manufacturing average return on the net book value of common stockholders equity, whichever is higher. These rates are reported by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*[12] They are based on an exhaustive sample of the firms in each industry and, subject to the limitations found in all accounting data, represent an accurate estimate of the past performance of U.S. industries. To smooth out year-to-year fluctuations, the discount rate used in computing the noncompliance penalty is the average of the most recent twenty quarters. However, as was discussed in Section III, a discount rate cannot be used that is lower than the inflation rate.

In theory, the appropriate rate to include in the formulae is the marginal rate of return on equity; that is, the rate which investors would require in order to commit additional common equity funding to the firm. The estimation of such a rate is difficult. One possible estimate of this rate is the internal "hurdle rate" which firms use to evaluate capital investments. This rate would automatically provide an insight into the firm's own estimate of the opportunity cost of additional equity capital. However, because a hurdle rate is not used internally by all firms, because it is often very subjectively determined, and because it would be administratively difficult to obtain, it was rejected as an estimate of the discount rate.

Another alternative means of estimating the discount rate is the expected future return on a share of the firm's common stock. Unfortunately, only the stocks of a small percentage of firms are publicly held and frequently traded and hence, have realistic share prices. Moreover, even if such prices exist, the expected return would have to be estimated. It is doubtful whether a satisfactory means could be found for providing these estimates.

Other estimates of the opportunity cost of equity funds based on economic and finance theory are available in the literature.[13] However, there currently exists no commonly accepted methodology for making such estimates and the cost of updating these estimates is prohibitive. Hence, these estimates were also rejected as a source of the discount rate. The use of either these theoretical estimates or the hurdle rate estimates would have resulted in higher penalties since these estimates tend to be higher than the average return on equity over the past five years.

The shortcomings of the methods described above have led to the selection of a return on equity which is based on book values. However, since the appropriate discount rate should reflect the expected earnings on the firm's current investment opportunities rather than its past investments, the higher of the industry average rate or the all-manufacturing average rate of return is used rather than a firm-specific rate. It is assumed that firms in industries which historically have earned more than the all manufacturing rate of return will continue to have investment opportunities available to them which will yield a higher than average rate of return. For firms in industries which have historically earned less than the all manufacturing rate of return, the all manufacturing rate of return is more indicative of the return on the future investment opportunities available to the firm.[14]

Certain consequences result from the use of industry average rather than firm-specific data. If firm-specific data were employed, those firms with high historical returns would, all else being equal, pay higher penalties. Similarly, firms whose returns have been below industry average would pay lower penalties. Since the savings to a firm from delaying compliance is related to future returns on equity, the question becomes whether the future returns of a specific firm will best be estimated by its own past performance. The fact that individual firm performance is influenced by a variety of factors, often peculiar to the firm and not likely to be repeated, and that future returns are more closely related to the investment opportunities available to industry argues for the use of industry average data.

The use of an industry average rate or the all-manufacturing rate also eliminates the need to verify firm-specific rate of return calculations. Particularly in the case of small firms, the amount and timing of reported earnings could be significantly altered such that a rate of return computed on their book value would be meaningless. In the case of partnerships or sole proprietorships, it would be difficult to disentangle personal finances from company finances. The lack of sufficient

[11] *Chemical Engineering*, McGraw-Hill, Inc., biweekly issues, 1978–1982. For the period November 1977 to November 1982, this rate was 8.6 percent.

[12] For public electric utilities, the return on equity data is found in the most recent issue of Standard and Poor's *Industry Survey*. The electric utility return on net worth is to be used as the discount rate for electric utilities.

[13] See, for example, Gerald A. Pogue, *Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments*, Environmental Protection Agency, EPA–230/3–76–001, November 1975.

[14] The industry average rate of return is employed as the discount rate for utilities, even if the all manufacturing rate is higher, since the investment opportunities available to utilities may be limited by federal or state law or public utility commission practice.

resources to verify these data argue strongly for the use of an average rate.

7. *Interest Rate.*

This is the current rate of interest which would be paid by the firm if additional debt were to be acquired. The interest rate is found by taking the average yield as published in Moody's *Bond Record* on corporate bonds of a grade equal to that on the firm's bonds having the highest rating.

If a firm's debt is not rated, the interest rate is found by using the current rate of interest on grade "A" corporate industrial bonds, published in the *Bond Record*. The current interest rate on grade "A" corporate bonds was chosen because it is a widely available figure which estimates the rates appropriate to a large percentage of firms. Since Moody's *Bond Record* does not provide average yields for bonds rated lower than "Baa", firms with debt rated "Baa" or lower will use the "Baa" rate of interest.

If the firm expects to use industrial development bonds (IDB's) to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate bond rate and the IDB rate [15] will be used as the interest rate in the model. The calculation of this weighted average is explained in the Attachment E.

8. *Preferred Stock Dividend Rate.*

This is the rate which would be paid by the firm to its preferred stockholders on new issues of preferred stock. Like return on equity and the interest rate, the dividend rate on preferred stock represents the marginal cost of this component of long-term financing.

If a firm has preferred stock outstanding which has a rating, the preferred stock dividend rate is given by taking the average yield on public utility preferred stock [16] of that rating as reported in Moody's *Bond Record*. If the stock is not publicly traded or has no rating, the rate is found by using the current preferred stock yield on grade "a" issues. Since Moody's *Bond Record* does not provide average yields for preferred stock rated lower than "baa" or higher than "aa", firms with stock rated "baa" or lower should use the "baa" rate and firms with stocks rated "aa" or higher should use the "aa" rate.

9. *Debt Share.*

This share is the proportion of long-term financing provided by long-term loans, bonds and other long-term interest-bearing instruments. It is a fraction, the numerator of which is the sum of all long-term accounts on the firm's balance sheet. The denominator of the fraction is the sum of these debt accounts plus preferred stock plus common equity investment.

The source of the fraction of debt is the share of debt in the firm's capital structure averaged over the five most recent years. The five year average is used to smooth out year-to-year fluctuations.[17]

10. *Equity Share.*

This share is the proportion of the firm's long-term financing which is provided by common shareholders. It is a fraction, the numerator of which is the sum of all common equity accounts on the firm's balance sheet including common stock, retained earnings, capital surplus and any other accounts representing common equity investments.[18] The denominator of the fraction is given by adding to the numerator the sum of the preferred stock account plus all long-term debt issued by the owner (excluding portions of such debt in the current account).

The source of the fraction of equity in the investment is the average fraction of equity in the capital structure as given in the firm's five most recent annual financial statements.

11. *Preferred Share.*

This share is the fraction of long-term financing provided by preferred stock. The numerator is given by the preferred stock accounts in the firm's balance sheet and the denominator by the quantity: long-term debt plus preferred stock plus common equity interest.

The source of the fraction of preferred stock in the investment is the average fraction of preferred stock in the capital structure as given in the firm's five most recent annual financial statements.

12. *Depreciation.*

Computation of the noncompliance penalty involves consideration of the depreciation-related tax benefits of an investment in pollution control equipment. The depreciation schedule depends on the asset's depreciable life. EPA's computer program to calculate the penalty automatically selects the appropriate depreciation schedule.

The depreciation life is the number of years over which a particular investment in pollution control equipment may be depreciated. This figure depends on the type of asset being depreciated. It is either 3, 5, 10, or 15 years. The IRS publishes regulations specifying the category to which each asset belongs. Most pollution control equipment will fall into the five-year category. If the figure is greater than ten years, a ten-year limit is used, consistent with the requirements of the Act.

13. *Useful Life.*

The useful life of the pollution control equipment is the number of years it can be expected to operate before replacement.

The source of the useful life of the pollution control equipment is the asset guideline period for the appropriate class. These are provided by the Internal Revenue Service in *Revenue Procedure 77-10* (26 CFR 601.105). They represent IRS estimates of the average lives of assets within a particular industry. They were established after an exhaustive study of actual asset lives and will be updated as appropriate.

Section V—Derivation of Formulae

Pollution Control Cash Flows

The savings from delaying pollution control investment has both a capital and an operating and maintenance component. The calculation of savings is performed sperately for each component.

To compute the capital component of the savings from delaying pollution control investment requires that the cash flows be estimated over a thirty year time horizon. The simplest approach to calculating the present value of the cash flows over thirty years is to calculate the present value of cash flows in the initial cycle of N months [19] and use that value as a basis for future replacement cycles. If a fractional cycle is needed at the horizon, a separate calculation is made for that cycle. The derivation described below uses such an approach.

Initial Cycle of Equipment

The first category is the cash flow resulting from the initial investment of equity. It is given by:

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[15] The interest rate on IDB's is published by Smith, Barney, Harris Upham & Company in the *Credit Market Comment*. This review is published weekly and the current yield on pollution control bonds is printed on the last page.

[16] Average yields are published only for public utility preferred stocks. Non-utility corporations, as well as utilities, should use these average yields if preferred stock is a part of their capital structure.

[17] If financial statements are unavailable, which may be the case for some privately-held firms, the fraction of debt and equity used in the penalty calculation will be the five year average debt and equity share for the firm's industry. This can be calculated from the financial statement provided for the industry by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations*.

[18] Some firms carry Treasury stock as an asset on their balance sheet. Such stock should properly be shown as a contra-account to common stock. In cases where it is shown as an asset, it should be used to reduce the common equity accounts for purposes of this calculation.

[19] N represents the useful life of the pollution control equipment in months.

$$EI = \Pi * Q \quad (1)$$

where:
Π = the capital cost of the pollution control equipment.
Q = the fraction of the firm's capital structure made up of equity.

From this amount must be subtracted the effect of the investment tax credit whose cash flow is given by:

$$ITC = \Pi * t_{ITC} \quad (2)$$

where:
t_{ITC} = the adjusted investment tax credit rate.

The investment tax credit rate must be adjusted if not all of the investment qualifies for the credit. This adjustment is explained in Attachment B. Further, if the investment is financed with industrial development bonds and rapid amortization is selected (see Attachment C), only one-half of the normal investment tax credit is allowed on that portion of the investment so financed.

The initial cash flow at the beginning of the cycle is found by subtracting equation (2) from equation (1):

$$\begin{aligned} INITIAL_0 &= EI - ITC \\ &= \Pi * Q - \Pi * t_{ITC} \\ &= \Pi * (Q - t_{ITC}) \end{aligned} \quad (3)$$

This cash flow occurs at the beginning of the first cycle—at the end of month 0. The initial cash flow in the remaining months of the first cycle is zero. ($INITIAL_m = 0$ for $m \neq 0$.)

The second category of cash flow is the capital-related flow which occurs over the depreciable life of the equipment. It is made up of depreciation and the flows associated with financing the equipment. The effect of depreciation is to reduce the firm's tax liability. The depreciation cash flow in month m is given by:

$$DEP_m = \Pi * d_m * t_{TR} \quad (4)$$

where:
d_m = the fraction of the original cost depreciated in month m (see Attachment C).
t_{TR} = the firm's marginal income tax rate (see Attachment D).

As the equipment is depreciated, the book value of the equipment declines. The book value of the equipment at the beginning of month m is given by:

$$(BOOK\ VALUE)_m = \Pi * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (5)$$

where:
$d_0 = 0$ by definition

The remainder of the annual capital-related cash flow consists of principal repayments and financing charges (i.e., interest and dividends) on the debt and preferred stock issued to finance the equipment purchase. The amount of the initial investment financed by debt is given by:

$$DEBT\ SHARE = \Pi * B \quad (6)$$

where:
B = the fraction of the firm's capital made up of debt.

Debt is repaid each month in proportion to the depreciation of the asset. That is, at the end of each month the same fraction of the principal is repaid as the original book value of the investment is depreciated.[20] Therefore, the repayment of principal in month m is given by:

$$PRIN_m = d_m * \Pi * B \quad (7)$$

Interest is paid at the end of each month on the principal outstanding at the beginning of month m.

$$(INTEREST\ CHARGE)_m = R_{INT} * (PRINCIPAL\ OUTSTANDING)_m \quad (8)$$

where:
R_{INT} = the firm's monthly interest rate (expressed as a decimal fraction).[21] See Attachment E

Since interest is tax deductible, only the after-tax effects should be considered in calculating the cash flow. Therefore, the interest payment net cash flow in month m becomes:

$$INT_m = R_{INT} * (PRINCIPAL\ OUTSTANDING)_m * (1 - t_{TR}) \quad (9)$$

The principal outstanding is the original amount borrowed, $\Pi * B$, less the amount which has been repaid prior to the beginning of the month. The amount repaid prior to the beginning of month m is:

$$(AMOUNT\ REPAID)_m = \sum_{k=0}^{m-1} \Pi * d_k * B \quad (10)$$

where:
$d_0 = 0$ as before.

The principal outstanding at the beginning of month m is the amount initially borrowed less the amount repaid by the end of month m−1.

$$(PRINCIPAL\ OUTSTANDING)_m = \Pi * B - \sum_{k=0}^{m-1} \Pi * d_k * B \quad (11)$$

Combining equations (9) and (11) yields a formula for the interest-related cash flow in year month m:

$$INT_m = R_{INT} * \Pi * B * (1 - t_{TR}) * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (12)$$

[20] A variety of assumptions could be made concerning the debt repayment schedule. The formulae assume that debt is repaid over the depreciation life of the equipment. This assumption is made in order to hold constant the capital structure of the firm over the time horizon.

[21] The monthly interest rate, R_{INT}, equals $(1+R)^{1/12}-1$, where R is the annual interest rate paid by the firm on new issues of debt.

The portion of the investment financed by preferred stock is given by:

$$\text{PREFERRED Share} = \Pi * F \quad (13)$$

where:

F = the fraction of preferred in the firm's capital structure.[32]

Just as the additional debt is repaid, the preferred stock is redeemed as the asset is depreciated. At the end of each month, the same fraction of the preferred stock is redeemed as the original book value of the investment is depreciated. Redemption in month m is given by:

$$PREF_m = d_m * \Pi * F \quad (14)$$

Dividends on preferred stock are paid at the end of each month on the amount of stock outstanding at the beginning of the month.

$$DIV_m = R_{DIV} * (\text{PREFERRED OUTSTANDING})_m \quad (15)$$

where:

R_{DIV} = the monthly dividend rate on preferred stock (expressed as a decimal fraction).[33]

These dividends are not tax deductible. The preferred outstanding is the original amount issued, $\Pi * F$, less the amount redeemed prior to the beginning of the month. The amount redeemed prior to month m is:

$$(\text{AMOUNT REDEEMED})_m = \sum_{k=0}^{m-1} \Pi * d_k * F \quad (16)$$

where:

$d_0 = 0$ as before.

The amount of preferred outstanding at the beginning of month m is equal to the amount originally issued less the amount redeemed.

$$(\text{PREFERRED OUTSTANDING})_m = \Pi * F - \sum_{k=0}^{m-1} \Pi * d_k * F \quad (17)$$

The preferred dividend paid at the end of month m is found by combining equations (15) and (17).

$$DIV_m = R_{DIV} * \Pi * F * \left(1 - \sum_{k=0}^{m-1} d_k\right) \quad (18)$$

Therefore, the total monthly capital-related charges for each month m of the initial cycle are:

$$\text{MONTHLY CAPITAL RELATED}_m = -DEP_m + PRIN_m + INT_m + PREF_m + DIV_m \quad (19)$$

The negative sign preceding the depreciation cash flow results from the fact that this component represents a reduction in cash outflow. These monthly capital-related cash flows will occur over the depreciable life of the equipment. After the equipment is fully depreciated, these cash flows will be zero until the next cycle of equipment is installed.

[32] Note that Q+B+F must be equal to 1.

[33] The monthly dividend rate, R_{DIV}, equals $(1+R)^{1/12}-1$, where R is the annual dividend rate paid by the firm on new issues of preferred stock.

Future Cycles of Equipment

The process just described must now be repeated for any future replacement cycles which fall within the thirty-year time horizon. For the initial investment, the values in future cycles can be computed by making a simple adjustment for inflation.

For example, the replacement of equipment after N months, when the original equipment wears out, gives rise to an initial equity investment equal to:

$$INITIAL_N = INITIAL_0 * (1+i)^N \quad (20)$$

In general, the initial equity investment at the end of month m will be equal to the investment made N months ago inflated at a monthly inflation rate, i. The initial capital expense at the end of month m is, therefore, equal to:

$$INITIAL_m = INITIAL_{m-N} * (1+i)^N$$

This can also be generalized as:

$$INITIAL_{(j-1)N} = INITIAL_0 * (1+i)^{(j-1)N} \quad (21)$$

for the jth cycle.

In most months this value will be zero. Cash flows due to the initial investment at the beginning of a cycle will occur only in months 0, N, 2N, 3N and so forth until the end of the thirty year (360 month) time horizon. If a cycle should end precisely at the end of the thirty year time horizon, it is assumed that the firm will not invest in replacement equipment at the end of the horizon. $INITIAL_{360}$ will always be zero.

The monthly capital-related charges for each future cycle may be calculated according to:

$$\text{Monthly Capital Related}_m = \text{Monthly Capital Related}_{m-N} * (1+i)^N \quad (22)$$

The monthly capital-related cash flows will occur in the first n months of each replacement cycle, where n is the depreciation life of the equipment in months. In all other months, the value of these cash flows will be zero.

The monthly cash flow for each month m is the sum of the initial cash flow and the capital-related cash flow.

$$MCF_m = INITIAL_m + \text{MONTHLY CAPITAL RELATED}_m \quad (23)$$

These cash flows can be calculated for each of the 360 months in the planning horizon.

Treatment of Last Cycle Before Time Horizon

If the useful life of the equipment is such that a cycle ends at the thirty year horizon, no special horizon effects need be taken into account. If the final replacement cycle would extend beyond the thirty year horizon, a fractional investment is assumed. This fractional investment is proportional to the time remaining until the thirty year horizon.

The fractional investment is given by:

$$\Pi_K = \Pi * (1+i)^K * \frac{360-K}{12 \times N} \quad (24)$$

where K = month in which fractional investment is made.

Depreciation on the final fractional cycle depends on the cycle length. If the cycle is at least as long as the depreciable life, normal depreciation is used. If the cycle is shorter than depreciation life, straight line depreciation is used over the fractional cycle length.

Discounting the Cash Flows

The present value of the cash flows in each month will be:

$$PVMCF_m = \frac{MCF_m}{(1+e)^m} \quad (25)$$

where: e = the monthly discount rate.[24]

The sum of the present value of the cash flows for each month represents the cost to the firm of on-time compliance.

$$PVPCE = \sum_{m=0}^{360} PVMCF_m = \sum_{m=0}^{360} \frac{MCF_m}{(1+e)^m} \quad (26)$$

The Value of Delay

The quantity just calculated is the present value, as of the day on which compliance should have been achieved, of cash flows that the firm would have experienced had it not delayed pollution control investment. If compliance is delayed for L months, the series of cash flows will also be delayed for L months. Each monthly cash flow, however, will be higher because of the effects of inflation. It will become:

$$MCF_m = MCF_{m-L} * (1+i)^L \quad (27)$$

Thus, each cash flow in the delay case corresponds to a cash flow in the on-time case. The delay case cash flows are larger by a factor equal to $(1+i)^L$. However, because they are displaced in time by L months, their present value will be smaller. The present value of the delay case cash flows can be calculated by:

$$PV_{DELAY} = PV_{PCE} * \left(\frac{1+i}{1+e}\right)^L \quad (28)$$

The capital component of the savings from delay is found by subtracting the present value of the delay case cash flows from the present value of the on-time cash flows:

$$SAVINGS_{CAP} = PV_{PCE} - PV_{DELAY} \quad (29)$$

The second component of savings is that associated with monthly operating and maintenance expenditures. These expenses grow each month at the monthly inflation rate. Like interest and dividend payments, they are assumed to be paid at the end of the month. They are tax deductible so their associated cash flows must reflect the effect of income taxes.

Let $O\&M_m$ be the cash flow resulting from operating and maintenance expense in month m. Define M_0 as the monthly operating and maintenance expense before tax stated in current dollars as of the beginning of the period of noncompliance. The first payment actually made will be this amount escalated by the monthly inflation rate. The resulting cash flow is given by:

$$O\&M_1 = M_0 * (1-t_{TR}) * (1+i)$$
$$O\&M_2 = O\&M_1 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^2 \quad (30)$$
$$O\&M_3 = O\&M_2 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^3$$

where i = the monthly inflation rate.

In general, the monthly O&M expense in month m is:

$$O\&M_m = M_0 * (1-t_{TR}) * (1+i)^m \quad (31)$$

The savings from O&M is simply equal to the present value of the O&M cash flows during the period of noncompliance. Thus,

$$Savings_{O\&M} = \sum_{m=1}^{L} \frac{O\&M_m}{(1+e)^m}$$

$$= M_0 * (1-t_{TR}) * \sum_{m=}^{L} * \left(\frac{1+i}{1+e}\right) \quad (32)$$

The total savings from delayed compliance is equal to the sum of the capital and O&M components.

$$SAVINGS = SAVINGS_{CAP} + SAVINGS_{O\&M} \quad (33)$$

Conversion of Savings into Monthly Equivalents

In order to convert the savings from noncompliance into a series of penalty payments, it is necessary to express savings as a series of equivalent monthly amounts.[25] This series, which will be referred to as the "savings equivalent," must have two attributes:

- It must have the same present value as the cash flows which would have resulted from investment in and operation of the required pollution control equipment. When these amounts are translated into a penalty, this requirement is intended to insure that a firm which continues to delay its pollution control expenditures will not benefit by doing so.
- The savings equivalents must escalate at the rate of inflation. If this requirement is not met, the early penalty payments overstate the savings to the firm while later payments understate it.

Let S_j be the savings equivalent at the beginning of month j.[26] The requirement that the series escalate with inflation implies that:

$$S_2 = S_1 * (1+i)$$
$$S_3 = S_2 * (1+i) = S_1 * (1+i)^2$$
$$S_j = S_{j-1} * (1+i) = S_1 * (1+i)^{j-1} \quad (34)$$

where: i = the monthly inflation rate.

The present value of each of these terms is calculated by discounting:

$$PV_{S_j} = \frac{S_j}{(1+e)^{j-1}} \quad (35)$$

Combining with equation (34) yields:

$$PV_{S_j} = \frac{S_1 * (1+i)^{j-1}}{(1+e)^{j-1}} \quad (36)$$

The present value of these L monthly savings equivalents must be equal to the savings from delay. Thus:

$$SAVINGS = \sum_{j=1}^{L} PV_{S_j} = \sum_{j=1}^{L} S_1 * \left(\frac{1+i}{1+e}\right)^{j-1}$$

$$\text{or} \quad S_1 = \frac{SAVINGS}{\sum_{j=1}^{L} \left(\frac{1+i}{1+e}\right)^{j-1}} \quad (37)$$

This represents the first term in the series. All terms after the first month

[24] As stated in Chapter III, the discount rate cannot exceed the inflation rate. The monthly discount rate, e, is equal to $(1+E)^{(1/12)}-1$, where E is the annual discount rate.

[25] The final penalty payment will be made on a quarterly basis. However, in order to increase the accuracy of the penalty calculation, all adjustments to the economic savings are made on a monthly basis.

[26] It is assumed that penalties are paid at the beginning of each period in contrast to the cash flows which are assumed to occur at the end of each period.

can be computed by multiplying S_1 by the quantity $(1+i)$ raised to the appropriate power. For example, the savings equivalent at the beginning fo the k^{th} month would be:

$$S_k = S^1 * (1+i)^{k-1} \quad (38)$$

The present value of these monthly savings equivalents is equal to the present value of the costs avoided during the period of noncompliance.

The Effect of Precompliance Expenditures

The series of savings equivalents just developed is based on the assumption that a firm installing pollution control equipment will pay for it when installation is completed and operation begins. In fact, substantial precompliance expenditures will often be required before final installation is completed. In calling for the imposition of a noncompliance penalty, Congress explicitly required that these precompliance expenditures be accounted for in the penalty calculation. The adjustments needed to incorporate the effect of precompliance expenditures are described below. The procedure is begun by dividing the savings equivalent into its capital and its operating and maintenance components. The adjustment of the capital component of the penalty is described, followed by a description of the procedure for adjusting the operations and maintenance component of the penalty.

Adjustments to Capital Components

The method used to account for precompliance capital expenditures is to adjust the capital component of a month's savings equivalent by multiplying it by a factor representing the proportion of the capital investment which is still to be made prior to the beginning of that month.[27] For example, if one-third of the total investment will have been made *prior* to the fifth month, the adjusted capital component of the savings for the fifth month is equal to two-thirds (the fraction of the investment still to be made) of the savings equivalent.

The computational procedure starts by rewriting formula (37) using formulae (32) and (33). This gives:

$$S_1 = S^C_1 + S^M_1 \quad (39)$$

where:

$$S^C_1 = \frac{SAVINGS_{CAP}}{SAVINGS} * S_1$$

$$S^M_1 = \frac{SAVINGS_{O\&M}}{SAVINGS} * S_1$$

The superscript C refers to the capital component of the savings equivalent and M refers to operating and maintenance component. Equation (38) for the capital component can then be rewritten as:

$$S^C_k = S^C_1 * (1+i)^{k-1} \quad (40)$$

Let A^C_k be the month k capital component adjusted for precompliance

$$A^M = SAVINGS_{O\&M} - \sum_{k=1}^{L}$$

where:

P^M_k = precompliance operating and maintenance expense incurred in month k of the noncompliance period.

Calculation of Quarterly Penalties

The Act requires that the noncompliance penalty payments be made on a quarterly basis and that all payments be of equal value. The EPA interprets this requirement to mean equality in real rather than nominal terms. Consequently, the series of

The series of escalating payments must have this same present value.[28a] Thus, if P_q is the payment to be made at the beginning of quarter q, the following equality must exist:

expenditures. That is, A^C_k is equal to S^C_k times a factor representing the fraction of the initial capital investment (II) which remains to be made. If X^C_k is the fraction of the initial investment which has been made prior to the beginning of month k [28] then:

$$A^C_k = (1 - X^C_k) * S^C_k \quad (41)$$

Adjustment of Operation and Maintenance Component

The operating and maintenance component of the savings must be adjusted to a value which is net of any actual O&M expenditures made during the period of noncompliance. The adjustment of the operating and maintenance component, A^M, is equal to the present value of the operating and maintenance component of the savings ($SAVINGS_{O\&M}$ as defined in equation (32) less the present value of any precompliance O&M expenditures made during the period of noncompliance.[29] Thus:

$$\frac{P^M_k}{(1+e)^k} \quad (42)$$

payments must increase with inflation. This can be done by converting the monthly values of the capital component of the savings computed above into their present value equivalent, adding the present value of the O&M component of the savings, and the converting that present value into a new series of escalating quarterly payments. Let L be the number of months which compliance is delayed. Then the present value is given by:

$$PV_{ADJUSTED\ SERIES} = A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1=e)^{k-1}} \quad (43)$$

[27] Note that the capital expenditure credit includes only those payments made prior to the beginning of the month. The capital expenditure credit does not include expenditures made in the current month since cash flows are assumed to occur at the end of the month. Therefore, the firm was able to earn a return during the month on the current month's capital expenditure which it would not have earned if compliance had not been delayed. Hence, the firm's savings from delay in the current month should include this return.

[28] Note that X^C_k has a value between 0 and 1.

[29] If this calculation should result in an adjusted O&M penalty less than zero the present value of the adjusted O&M penalty, A^M, shall be set equal to zero. The firm will not be allowed to offset any portion of the capital component of its penalty with precompliance O&M expenses.

[28a] The number of required quarterly payments is determined from the months out of compliance using the formula:

$$T = Integer\ [(L+2)/3]$$

where:

Integer = the closet integer less than or equal to the number in the brackets.

L = number of months out of compliance.

[28b] The quarterly equivalent discount and inflation rate is found by taking the monthly equivalent discount and inflation rate to the third power. Thus:

$$e' = (1+e)^3 - 1$$
$$i' = (1+i)^3 - 1$$

where:

e = monthly equivalent discount rate.

i = monthly equivalent inflation rate.

$$A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}} = P_1 + \frac{P_2}{(1+e')} + \ldots + \frac{P_T}{(1+e')^{T-1}} \quad (44)$$

where:

e' = the quarterly equivalent discount rate.[28]

T = the number of quarterly payments.

However, since $P_q = P_{q-1} * (1+i)$

$$A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}} = P_1 * \sum_{q=1}^{T} \left(\frac{1+i'}{1+e'} \right)^{q-1}$$

where:

i' = the quarterly equivalent inflation rate.

or

$$P_1 = \frac{A^M + \sum_{k=1}^{L} \frac{A^C_k}{(1+e)^{k-1}}}{\sum_{q=1}^{T} \left(\frac{1+i'}{1+e'} \right)^{q-1}} \quad (45)$$

and

$$P_q = P_{q-1} * (1+i') = P_1 * (1+i')^{q-1} \quad (46)$$

These payments have the following properties:

- They are equal in real terms.
- Their present value is equal to the present value of savings after adjustments for pre-compliance capital and operating and maintenance expenditures.
- If either the assumed schedule of expenditures for compliance, the amounts of those expenditures, or the compliance date are inaccurate, the payments must be revised. This is discussed below.

Post-Compliance Settlement

The original penalty computation is based on the costs which the firm would have experienced had compliance not been delayed. If compliance is delayed, inflation will result in the actual expenditures being somewhat larger. This inflation-induced variation is already accounted for in the formulation described above. However, simple estimation error may also contribute to the difference and it is this error that the post-compliance settlement is intended to remedy.

The method involves recomputing the penalty using revised estimates of capital costs and operating and maintenance costs, and revised estimates of the discount rate, the inflation rate and the capital structure of the firm. These revised estimates are then used in conjunction with the actual schedule of precompliance expenditures to recalculate the penalty payments. The settlement is based on the difference between these payments and those actually paid.

The settlement amount is the cumulative overpayment or underpayment at the end of the noncompliance period plus interest on each month's outstanding balance (the cumulative overpayment or underpayment at the end of each month). The formula for computing the settlement payment is as followings: Let Δ_k be the difference between the penalty that was paid in month k and the amount which should have been paid in that month. Let Z_k be the cumulative overpayment or underpayment at the end of month k, including interest. Then:

$Z_1 = \Delta_1 * r$

and $Z_2 = (\Delta_2 - Z_1) * r$

In general,

$Z_k = (\Delta_k + Z_{k-1}) * r$

where:

Z_k = the cumulative overpayment or underpayment at the end of month k, including interest.

Δ_k = the difference between the penalty amount paid in month k and the penalty amount which is computed using the revised estimates.

r = the monthy equivalent rate of interest determined by the Secretary of the Treasury.[30]

The total post-compliance settlement as of the date of compliance is given by:

$Z = Z_L$

where:

Z = the total post-compliance settlement as of the date of compliance.

L = The total number of months of noncompliance.

Z_L = the cumulative overpayment or underpayment at the end of the noncompliance period, including interest.

The total post-compliance settlement as of the day of compliance is then adjusted to reflect delay in the actual settlement payment. The final settlement amount is:

$Z = Z * (1+r)^D$

where:

Z = the actual settlement to be paid (or refunded) on the day of the settlement.

Z = the total post-compliance settlement as of the date of compliance.

r = the monthly equivalent rate of interest specified by the Secretary of the Treasury.[31]

D = the number of months between the date of compliance and the actual settlement.

Delayed Penalty Payments

In general, any time a penalty payment (P) is delayed by k months, the actual payment should be equal to:

$P * (1+e)$

For example, if the first penalty payment is not paid until six months after the notice of noncompliance has been received, the first and second quarterly payments will be delayed for six and three months, respectively. If this occurs, the penalty payment after an initial six-month delay is equal to:

$P_1 * (1+e)^6 + P_2 * (1+e)^3 + P_3$

Attachment A—Definition of Symbols

Note.—All variables denoted with an asterisk (*) are expressed as decimal fractions in the formulae in Section V. In the Instruction Manual the user is instructed to

[30] The Secretary of the Treasury will designate an annual rate of interest for overpayments and an annual rate of interest for underpayments. For underpayments, the Secretary of the Treasury has determined that the rate of interest will equal the discount rate. Therefore, for each month with a positive outstanding balance indicating a cumulative overpayment ($\Delta_k + Z_{k-1}$ greater than zero), r will equal the monthly equivalent of the interest rate for overpayments. For each month with a negative outstanding balance indicating a cumulative underpayment ($\Delta_k + Z_{k-1}$ less than zero), r will equal the montly equivalent of the discount rate as revised in the post-compliance settlement.

[31] The interest rate, r, will be the monthly equivalent of the interest rate for overpayments if Z is greater than zero. If Z is less than zero, r will equal the monthly equivalent of the discount rate as revised in the post-compliance settlement.

enter some of these variables as percentages; that is, 10 percent as opposed to 0.10. The computer model then converts these percentages to decimal fractions for use in the model.

$\bar{A}_C^k$ = the monthly equivalent of the capital component of savings adjusted for precompliance expenditures.

A^M = the O&M component of savings adjusted for pre-compliance expenditures.

B = the fraction of debt in the owner's capital structure (book value).*

b = the fraction of the investment financed by industrial development bonds and depreciated using rapid amortization.*

CF_{FINAL} = cash flow at end of thirty year time horizon if compliance is not delayed.

CF'_{FINAL} = cash flow at end of thirty year time horizon if compliance is delayed.

D = the number of months between the date of compliance and the payment of the post-compliance settlement.

DEP_m = the net after-tax cash flow in month m resulting from depreciation of the initial investment.

DEP_{FINAL} = tax shield from writeoff of remaining book value of the equipment at the end of the thirty year time horizon.

d_m = the fraction of original asset value depreciated in month m.*

D_j = the fraction of original asset value depreciated in year j.*

Δ_k = the difference between the penalty paid in month k and the amount computed using revised figures for capital and O&M costs.

DIV_m = the dividend payment in month m on the preferred stock used to finance the initial investment.

E = the discount rate.*

e = the monthly equivalent of the discount E.*

e' = the quarterly equivalent of the discount rate E.*

EI = the amount of cash provided by equity investors to finance the initial investment.

f = the fraction of the initial investment which is amortized on a straight line basis over five years.*

F = the fraction of preferred stock (at book value) in the owner's capital structure.*

G = the depreciation life of the pollution control equipment in years.

I = the annual rate of inflation for pollution control expenditures.*

i = the monthly equivalent of the annual inflation rate I.*

i' = the quarterly equivalent of the annual inflation rate I.*

IBD = the dollar value of industrial development bonds issued to finance the pollution control equipment.

INITIAL = initial equity investment at the beginning of a replacement cycle.

INT_m = the interest payment cash flow (after the effect of taxes) in month m on the debt used to finance the initial investment.

II_{qual} = amount of initial capital investment which qualifies for the investment tax credit.

II = the initial investment in pollution control equipment; the amount which will be capitalized on the books of the firm and amortized over the life of the equipment.

ITC = the dollar amount of the investment tax credit.

j,k,m = indices, usually indicating the year or month in which a cash flow occurs.

K = the number of owners of the firm.

L = the number of months the firm is expected to be out of compliance.

M_o = monthly operating and maintenance expense in current dollars as of the beginning of the period of noncompliance.

MCF_m = cash flow in month m if compliance is not delayed.

MCF'_m = cash flow in month m if compliance is delayed.

MONTHLY CAPITAL RELATED $_m$ = capital-related cash flows in month m.

N = the useful life of the pollution control equipment in months.

n = the depreciation life of the pollution control in months.

$O\&M_m$ = the net operating and maintenance cash flow in month m.

P_q = the penalty payment to be made at the beginning of quarter q.

P^M_k = the precompliance operating and maintenance expenditure incurred in month k.

PV = the present value of cash flow.

PV_{MCFm} = present value of cash flow occurring in month m.

PV_{PCE} = present value of all cash flows resulting from the purchase and operation of the original and all future replacement cycles of pollution control equipment over the thrity-year time horizon.

PV_{DELAY} = present value of the costs of the original and all future cycles of pollution control equipment if compliance is delayed, as of the day compliance should have been achieved.

$PREF_m$ = the repayment of reallocation of preferred stock in month m.

$PREF_{FINAL}$ = repayment of outstanding preferred stock at the end of the thirty year time horizon.

$PRIN_m$ = the repayment of reallocation of debt in month m.

$PRIN_{FINAL}$ = repayment of outstanding debt at the end of the thirty year time horizon.

q = index indicating the quarter in which penalty payment is made.

Q = the fraction of common equity (at book value) in the owner's capital structure.*

r = the monthly rate of interest paid on post-compliance settlement amounts.*

R_{BOND} = the monthly interest rate on corporate or public utility bonds.*

R_{DIV} = the monthly dividend rate on perferred stock.*

R_{IDB} = the monthly interest rate in industrial development bonds.*

R_{INT} = the monthly rate of interest on long-term debt.*

S_k = the monthly equivalent of savings.

S^C_k = the monthly equivalent of the capital component of savings.

S^M_k = the monthly equivalent of the O&M component of savings.

SAVINGS = savings from delaying compliance.

$SAVINGS_{O\&M}$ = savings from forgone Q&M expenditures during period of delay.

$SAVINGS_{CAP}$ = savings from delaying capital-related cash flows.

T = the number of quarterly payments.

t_{FED} = the marginal federal income tax rate.*

t_{ITC} = the adjusted investment tax credit rate.*

t_L = the marginal local income tax rate.*

t_S = the marginal state income tax rate.*

$t_{s,l}$ = the marginal state and local income tax rate.*

t_{TR} = the marginal income tax rate.*

W_j = the fraction of common stock held by stockholder j.*

X^C_k = the fraction of the capital investment which has been made prior to the beginning of month k.*

X^M = the portion of the total operating and maintenance expense incurred during the period of noncompliance at a replacement source.*

Y = the statutory investment tax credit rate.*

Z = the actual post-compliance settlement to be paid or refunded.

Z_k = the cumulative overpayment or underpayment of the penalty at the end of month k, including interest.

Z = the total post-compliance settlement as of the date of compliance.

Attachment B—Investment Tax Credit Qualification

Only certain assets qualify for the investment tax credit. Most buildings are among the assets that do not qualify.[1] If the installation of pollution control equipment involves expenditures which will be capitalized and amortized over the tax life of the equipment, but which do not qualify for the investment tax credit, then the calculation of the credit must be adjusted.

Let II_{qual} be the investment which qualifies for the investment tax credit and let II be the total investment. If the investment tax credit rate specified in the Internal Revenue Code is Y, the adjusted rate for use in the noncompliance penalty calculation is:

$$t_{ITC} = \frac{II_{qual}}{II} * Y$$

A further adjustment must be made if the investment is financed by the sale of tax-exempt industrial development bonds. If rapid amortization is used, only one-half of the credit can be taken on the investment. Investment projects partially financed by industrial development bonds and using rapid amortization receive an investment tax credit weighted to reflect the loss of one-half of the credit on the portion paid for by bonds. This is shown below:

[1] An exception exists for the rehabilitation of certain older structures.

$$t_{ITC} = \left(\frac{1-b}{2}\right) * Y$$

where:

t_{ITC} = the adjusted investment tax credit rate.

b = the proportion of the investment financed by industrial development bonds and using rapid amortization.

Y = the investment tax credit rate specified in the Internal Revenue Code.

State investment tax credits should also be included in the investment tax credit rate. For example, Connecticut provides an investment tax credit for plants built in distressed areas. This tax credit lowers state taxes. Because state taxes are deductible from Federal taxes, only a portion of the credit benefits the firm. The total investment tax credit rate in states where the credit is based on actual investment is given by:

$$t_{ITC} = t_{ITC\ FEDERAL} + [(1 - t_{TR\ FEDERAL}) * t_{ITC\ STATE}]$$

where:

t_{ITC} = the adjusted investment tax credit rate.

$t_{ITC\ FEDERAL}$ = the adjusted Federal investment tax credit rate.

$t_{TR\ FEDERAL}$ = the marginal federal income tax rate.

$t_{ITC\ STATE}$ = the adjusted state investment tax credit rate.

Attachment C—Depreciation

The cash flow resulting from depreciation is given by:

$$DEP_m = d_m * II * t_{TR}$$

where d_m is the fraction of the original cost depreciated in month m and t_{TR} is the marginal income tax rate. The value of d_m will depend on the recovery class to which the asset belongs. The following schedule gives the depreciation fraction for each class. The fraction of the original cost depreciated in month m, d_m, will be one-twelfth of the annual amount under each of these schedules.

If the full 10 percent investment tax credit is taken, the basis must be reduced by 5 percent. Thus, the effective depreciation fractions are 95 percent of those listed in the schedule.

ANNUAL DEPRECIATION PERCENT

Recovery year	3-year	5-year	10-year	15-year public utility
1	25	15	8	5
2	38	22	14	10
3	37	21	12	9
4		21	10	8
5		21	10	7
6			10	7
7			9	6
8			9	6
9			9	6
10			9	6
11				6
12				6
13				6
14				6
15				6
Total	100	100	100	100

Rapid Amortization

Special rules governing the depreciation of pollution control equipment allow 85 percent of the investment to be written off on a straight line basis over a period of 60 months. That is, the depreciation in each month is equal to 1/60 of the capital cost. This approach is known as rapid amortization.

Only 85 percent of the capital is subject to rapid amortization, The remaining 15 percent must be depreciated using normal depreciation methods.

Attachment D—Tax Rate Adjustments

The calculation of the savings from noncompliance requires use of the firm's marginal income tax rate. For most large corporations operating in states with no state income tax, this figure would be 46 percent.[1] However, a state income tax or a non-corporate form of organization complicates the matter. This appendix discusses the adjustments necessary to deal with these two factors.

State and Local Income Taxes

Firms in some locations are subject to income taxation by more than one level of government. If state and local income taxes are deductible on the federal return, the rate of taxation on income, t_{TR}, must be computed according to the following procedure:

Let t_{FED} be the federal marginal tax rate and $t_{S\&L}$ be the rate on state and local returns. Taxes paid to state and local governments are deductible expenses on the federal return. Hence, this after-tax rate is given by:

$$t_{S\&L} * (1 - t_{FED})$$

The overall tax rate is the sum of federal and state and local effects. It is given by:

$$t_{TR} = t_{FED} + [t_{S\&L} * (1 - t_{FED})]$$

It is possible that certain local income taxes will be allowed as deductions when state income taxes are computed. In such cases, $t_S\&_L$ is given by:

$$t_S\&_L = t_S + t_L * (1 - t_S)$$

where:

t_S = the marginal state income tax rate.

t_L = the marginal local income tax rate.

If the local income tax is not deductible from the state, the combined rate is given by:

$$t_S\&_L = t_S + t_L$$

Multiple Ownership, Partnerships and Sole Proprietorships

The assumption in employing the tax rate, t_{TR}, and its components, t_{FED} and $t_S\&_L$, is that these rates represent the marginal income tax rates applicable to the owning firm. If there is more than one owner, as might be the case if the firm were a partnership of a Subchapter S corporation, the rate used in the noncompliance penalty should be a weighted average of the rates appropriate to each owner. In the case of sole proprietorships, the tax rate will be the marginal income tax rate applicable to the individual owner.

The formula for either t_{FED} or $t_S\&_L$ would then be given by:

$$t = W_1 t_1 + W_2 t_2 + \ldots + W_k t_k$$

$$= \sum_{k=1}^{K} W_k t_k$$

where:

t = the weighted average marginal income tax rate

W_k = the fraction owned by the k^{th} owner.

t_k = the marginal income tax rate of the k^{th} owner.

K = the number of owners.

Attachment E—Weighted Average Interest Rate

The interest rate used in the formulae is the marginal rate of interest which would be paid by the firm if additional debt were acquired. If Industrial Development Bonds (IDB's) are not used, this rate is simply the most recent average yield on corporate bonds of a grade equal to that on the firm's bonds having the highest rating. If the firm expects to use IDB's to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate (or public utility) bond rate and the IDB rate will be used as the interest rate in the model.

The weighted average interest rate will equal:

$$R_{INT} = \frac{IDB}{B*II} * R_{IDB} + \left(\frac{-IDB}{B*II}\right) * R_{BOND} \text{ for } IDB < B*II$$

[1] As of January 1981.

Where:

R_{INT} = the monthly weighted average interest rate (expressed a decimal fraction).

IDB = the dollar value of issued industrial development bonds.

B*II = the amount of the initial investment financed by debt.

R_{IDB} = the monthly equivalent of the interest rate on industrial development bonds (expressed as a decimal fraction).

R_{BOND} = the monthly equivalent of the interest rate on corporate or public utility bonds (expressed as a decimal fraction).

If the dollar value of industrial development bonds issued to finance the pollution control equipment exceeds the amount of the initial investment, the interest rate used in the formulae will be set equal to the interest rate on industrial development bonds. Thus:

$$R_{INT} = R_{IDB} \text{ for } IDB > B^*II$$

Attachment F—Facilities With Limited Useful Lives

In some cases, a noncomplying source of emissions will not be brought into compliance but instead will be retired or replaced by a complying source. For example, a steel company with a noncomplying open hearth furnace may wish to retire that furnace rather than bring it into compliance, and may replace its steel-making capability with a basic oxygen furnace. The basic oxygen furnace would have sufficient emission controls to allow it to meet the standards for new sources.

If the firm wishes to operate a noncomplying source for a limited period of time and then retire that source, the noncompliance penalty is calculated based on the capital and operating and maintenance costs which *would have been incurred* in bringing the source into compliance. These are the costs which are foregone in continuing to operate the noncomplying source and are the basis of the savings which accrue to the owner in so doing. Since the source is never brought into compliance, there are no precompliance expenditures. The full capital cost of compliance is assumed to be incurred in the final month before retirement.

When the firm plans to replace a noncomplying source with a new facility after some period of noncompliance, a similar approach is used. The basic calculation is based on the costs that would have been incurred in bringing the older source into compliance. However, an adjustment is then made for the precompliance expenditures made on the *new* complying facility. In other words, expenditures made on the construction of the new source are used to adjust the penalty much the same as precompliance expenditures on the older source would be used if they occurred. This procedure is explained below.

The basic equations utilized in the consideration of precompliance expenditures were detailed in Section V. These equations begin by breaking the savings equivalent into its capital and operating and maintenance components. The capital component is then adjusted for precompliance expenditures as shown in equation (41):

$$A^C_k = (1 - X^C_k)^* S^C_k \qquad (41)$$

where:

A^C_k = adjusted capital component in month k

X^C_k = fraction of total capital investment made prior to the beginning of month k

S^C_k = unadjusted capital component in month k

In the case of a firm replacing an older noncomplying facility with a new source which meets the emission standards, the equation above would be used with X^C_k based on the total investment (for both productive capacity and pollution control equipment [1]) in the new facility and S^C_k based on the capital costs of bringing the old source into compliance. As such, X^C_k would represent the fraction of the *total* investment required for the new facility expended prior to the beginning of month k.[2]

The adjusted value of the operating and maintenance component—A^M—is equal to the amount which would have been spent at the old source in complying adjusted for the portion of the total operating and maintenance expenses of the equipment at the new source made during the period of noncompliance. The equation for adjusting operating and maintenance expenditures is written as:

$$A^M = (1 - X^M) * SAVINGS_{O\&M} \qquad (42)$$

where:

A^M = adjusted operating and maintenance component of the penalty.

X^M = the present value of the operating and maintenance precompliance expenditures made during the period of noncompliance at the new source divided by the present value of the total operating and maintenance expense of the new source had it been in operation during the period of noncompliance.[3]

$SAVINGS_{O\&M}$ = the present value of the operating and maintenance expense of the old source had it been in compliance during the period of noncompliance; that is, the savings from forgone O&M expenditures during the period of delay.

As described above, noncompliance penalties for facilities with limited useful lives are based on the costs which would have been incurred in bringing the facility into compliance. Because the source is retired rather than brought into compliance, no post-compliance settlement based on the capital and operating and maintenance costs actually incurred is possible. However, if the noncomplying source is replaced with a new facility, the noncompliance penalty is adjusted based on planned precompliance capital and operating and maintenance expenditures. In such cases, a post-compliance settlement is possible and necessary to adjust for differences between planned versus actual precompliance expenditures and the resulting alterations in the noncompliance penalty. The estimates of the discount rate, the inflation rate, and the firm's capital structure are also updated at the time. Such a settlement involves three steps:

- The actual capital and operating and maintenance expenditures for each month are converted to dollars as of the date of noncompliance.
- Each monthly constant dollar capital expenditure's percentage of the total capital expenditure is calculated. The percentage of the total operating and maintenance expenditures made during the period of noncompliance is also calculated.
- The percentages of total capital expenditures and total operating and maintenance expenditures made during the period of noncompliance are used to adjust the respective penalty components computed in the initial penalty calculation.

The formulae are identical to those shown in Section V for the post-compliance settlement.

Attachment G—Application to Government Facilities

The noncompliance penalties described in this document are designed to remove the economic savings realized by a firm due to delayed compliance with pollution control requirements. Similar savings are realized by government-owned facilities—emission sources owned or under the control of municipal, state, federal and other government and quasi-government entities. The statute contemplates that noncompliance penalties will be assessed against such facilities as well.

The calculation of penalties for government facilities is carried out using the same general logic as presented in this document with two important changes:

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[1] Both production and pollution control expenditures are considered because in this case technology substitution itself as well as control equipment contribute to meeting the emission standards.

[2] The value of X^C_k cannot exceed one.

[3] The value of X^M cannot exceed one.

1. Cash flows due to tax effects are no longer relevant.

2. A discount rate appropriate for use with government projects is used.

Each of these changes is described below.

Tax Effects

Because government facilities do not pay income taxes, cash flows which result from tax effects in the private sector are not included in the noncompliance formulae for government facilities. As a result, cash flows due to tax savings from depreciation, interest expense, and operating and maintenance expense are not included in the formulae for government noncompliance penalties. The replacement of t_{ITC} and t_{TR} with zero in all formulae developed in Section V will accomplish this change.

Discount Rate

The choice of a discount rate for use in analyzing government investments has been a widely debated subject for a number of years. One commonly held view is that the appropriate discount rate for evaluating government investments is the rate of return that the resources utilized would have provided in the private sector.[1] The correct discount rate is, therefore, the opportunity cost of funds in the private sector. This rate is extremely difficult to estimate since it involves calculating the weighted average of the rates of return in various productive sectors of the economy from which resources are withdrawn for the government investment under consideration.

For the purpose of noncompliance penalties, the discount rate of 10 percent specified by the Office of Management and Budget (OMB) for use in federal project analysis is utilized.[2] OMB argues that the discount rate of percent represents an estimate of the average rate of return on private investment. This discount rate is often used by government, particularly in analysis of investments that will receive partial or full federal funding. Thus, use of this rate will insure that the calculation of noncompliance penalties for government facilities is accomplished on the basis consistent with the analysis of investments carried out by governmental decision makers.

All cash flows in the noncompliance formulae should be discounted using the 10 percent discount rate. In order to accompliah this using the formulae derived in Section V, the variables F (preferred stock share) and B (debt share) should be set equal to zero and the variable Q (the equity share) should be set equal to one. The variable E is redefined to be the government discount rate and should be set equal to 10 percent. These changes and those in the tax rate variables described above result in the following cash flow values for government facilities.

$$INITIAL_0 = II * 1 \quad (3)$$

$$MONTHLY\ CAPITAL\ RELATED_m = O \quad (19)$$

$$O\&M_m = M_0 * (1+i)^m \quad (31)$$

Thus, the cash flows resulting from the purchase and operation of pollution control equipment each month for a government facility is the sum of these contributions:

$$MCF_m = INITIAL_m + O\&M_m \quad (23a)$$

Equation (23a) can be substituted for equation (23) in the subsequent formulae derivation presented in Section V.

Discounting all the cash flows associated with noncompliance at the 10 percent discount rate is theoretically correct for government-funded projects. Some government-owned entities, however, may more closely resemble private corporations in the manner in which they raise and repay their capital. All government-owned entities will be treated in the manner described in Attachment G unless the source being considered demonstrates by providing appropriate data that either the debt-equity ratio or the discount rate or both is inappropriate and therefore that the exception provided by Attachment G should not apply to the entity in question.

Appendix B—Clean Air Act, Section 120, Noncompliance Penalties Instruction Manual

Contents

I. Introduction
II. Data Requirements and Data Sources
III. Using the Computer Program
IV. Calculation of the Post-Compliance Settlement
V. Special Conditions

Section I—Introduction

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 amendments to the Clean Air Act (the Act). The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control.

The economic benefits of a delay in the installation of pollution control equipment has two components. First, the firm benefits by delaying the capital expenditure needed for pollution control. The firm can earn a return on the capital costs of the pollution control equipment whose purchase has been delayed. The second component of the economic benefit is the operating and maintenance costs avoided as a result of not having installed the equipment and the return on expenditures avoided.

Implementing the Noncompliance Penalty

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document. This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry. When this adjustment requires several computations, a worksheet has been provided.

Level of Knowledge Required

The appendix has been written on the assumption that the user has had little formal training in business finance. Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document. It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document.

Plan of the Document

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program. As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer. An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II.

Section IV describes the calculation of the post-compliance settlement based on data used in Sections II and III.

Section V discusses the calculation of the penalty under special conditions. These conditions include investments financed with industrial development bonds, penalties for limited life

[1] See, for example, William J. Baumol, "On the Discount Rate for Public Projects," *Public Expenditure & Policy Analysis*, Robert H. Haveman and Julius Margolis, eds., Rand McNally Publishing Company, 1977, pp. 161–79.

[2] OMB Circular A–94.

facilities, and penalties for government facilities.

Section II—Data Requirements and Data Sources

Calculation of the noncompliance penalty requires a substantial amount of financial data. It is expected that most of these data, as well as the calculation itself, will be provided by the firm. This is in accordance with Section 120 of the Clean Air Act which will:

". . . require each person to whom is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3)) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator."

However, some firms may not comply with the requirement. Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments. This will require collection of data from several public sources. This section discusses the method used to collect data and prepare it for the calculation of the penalty.

Case Study

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company. While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry. The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations. Data prepared in the case discussion below will be entered in the computer program to determine a penalty in section III.

The Fertilizer Company

On August 31, 1983, the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act. The source of emissions was an incinerator used for the disposal of a waste byproduct from the manufacture of the firm's most profitable product.

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000. The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions.

In addition to the capital investment, it was estimated that $15,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated. It was also estimated that $1,890 in precompliance maintenance expense was necessary to make the equipment operational.

Engineers for the Fertilizer Company believed that it would be at least nine months before the equipment was installed and shake-down was completed. Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified.

The Fertilizer Company is a publicly-owned corporation with assets of $770 million. The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists.

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments. It had also submitted the data used in calculating the penalty. The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source. The computer program would check the accuracy of the firm's penalty calculation.

Preparing Data for Entry into the Program

The computer program will request data in a specific sequence. Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided. The following paragraphs follow the same sequence as is used to enter data into the computer program.

Initial Penalty Calculation or Post-Compliance Settlement

The program can be used to calculate both the initial penalty when the notice of noncompliance is received and the post-compliance settlement after compliance has been achieved. In the example of the Fertilizer Company, the initial penalty will be calculated in Section III and the post-compliance settlement will be calculated in Section IV.

Limited Life Facility

The program calculates a penalty based on eventual compliance at the source. However, some firms will attain compliance by shutting down the source or by replacing it with a new source. This option is discussed in detail in section V. For the Fertilizer Company, the source is not a limited life facility.

Industrial Development Bonds

The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V. For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds.

The Number of Months the Source Will Be Out of Compliance

The period of noncompliance is measured from the first day of the month following the month in which the notice of noncompliance is issued until the month standards are actually met. This will include installation time and shakedown period for the equipment. The firm is assumed to be in compliance during the entire month in which compliance is finally achieved. In the Fertilizer Company example, the firm stated that it will come into compliance in nine months.

Schedule of Capital Investments

This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment. It is assumed that all capital expenditures are completed when compliance is achieved.[1]

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management. They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense. In addition, the value of lost production due to downtime of production equipment should be included. These temporary losses of productive capacity are included in capital expenditures. Permanent losses of productive capacity are included in operating and maintenance expenditures. All costs must be stated in terms of the actual expenditures the firm expects to make each month.

The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II–1 to justify the estimate. Expenditures to the manufacturer for the equipment

[1] If a portion of the capital expenditures is expected to be incurred after compliance is achieved, these expenditures should be added to the capital expenditures made in the final month before compliance is achieved.

will be made in three equal installments, during the second, fourth, and ninth months of noncompliance. Each payment will be $166,666.67 ($500,000 divided by 3).

Schedule of Precompliance Operating and Maintenance Expenditures and Post-Compliance Monthly Operating and Maintenance Expense

These are costs the firm will incur for operation of the equipment to be installed.[3] They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a byproduct is created during equipment operation, disposal costs are included as an operating expense. If the byproduct can be sold or used in another process, the value of the byproduct should be subtracted from operating and maintenance expense.

Exhibit II–1—Calculation of the Capital Expenditure Input, [3] Fertilizer Company

1. List price or estimated price of the equipment	$485,903.85
2. Less: Discount from manufacturer	9,718.17
3. Equals net price of equipment	476,190.48
4. Plus: Sales tax on equipment [4]	23,809.52
5. Plus: Freight and delivery charge	0
6. Plus: Installation charge	0
7. Equals estimated cost of equipment installed	500,000.00
8. Plus: Value of lost production	0
9. Plus: Cost of building modifications	0
10. Equals Total Capital Expenditure	500,000.00

[3] This calculation uses Worksheet A in Attachment IV.
[4] Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1—Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.
Note.—Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit. Qualified percentage investment tax credit: Line 7 divided by Line 10 equals $500,000 divided by $500,000 multiplied by 10* equals 10%
*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II–16.

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act. For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense. Operating expense would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method. Hence, permanent losses in productive capacity which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category.

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners or actual data from similar operations. Two different estimates of operating and maintenance expense are necessary—those incurred before compliance and those estimated for the period after compliance. These amounts should be stated as the actual expense the firm would expect to incur in each month before compliance and the average monthly expense which will be incurred after the firm comes into compliance.

The Fertilizer Company supplied the data in Exhibit II–2 as estimated precompliance operating and maintenance expense. For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II–3.

Exhibit II–2—Estimate of Monthly Pre-Compliance Operating and Maintenance Expense Fertilizer Company

Pre-Compliance Operating Expense	
Months 1–6	0
Month 7: Labor (10 hours @ $10)	$100.00
Month 8:	
Labor (100 hours @ $10)	1,000.00
Power (1500 Kwh @ .0333 kwh)	50.00
Total	1,050.00
Month 9:	
Labor (50 hours @ $10)	500.00
Power (7200 Kwh @ .0333 kwh)	240.00
Total	740.00

Exhibit II–3—Post-Compliance Annual Operating and Maintenance Expense Fertilizer Company

1. Annual labor expense: [5] 840 hours × $10 per hour	$8,400.00
2. Power cost: 90,090 Kwh × $.0333 per Kwh	3,000.00
3. Water cost: Gallons × $—— per gallon	0
4. Raw materials and supplies: 1,000 lbs. × $1 per lb	1,000.00
5. Yearly increase in property tax	3,000.00
6. Cost of production lost due to maintenance or use of equipment	0
7. Total cost (1+2+3+4+5+6)	15,400.00
8. Less: Value of byproducts: 800 lbs. @ $.50 per lb	400.00
9. Annual operating and maintenance (7–8)	15,000.00
10. Average monthly operating and maintenance (9+12)	1,250.00

[5] This calculation uses Worksheet B in Attachment IV. All expenses should be stated in dollars as of the date the firm comes into compliance.

Investment Tax Credit Rate [6]

The investment tax credit is a percentage of the investment that can be used to directly reduce federal income tax. Although the maximum federal tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the revenue code: [7]

- Investments in the three year class receive a six percent credit.
- Certain investments do not qualify for the credit.

Investments in the 5, 10, and 15 year classes qualify for the full ten percent credit.

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure.[8] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life.

State investment tax credits should also be included in the investment tax credit rate. For example, the State of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas. Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis. The adjustment is made by multiplying the state investment tax credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[9]

[3] This should not include any operating and maintenance expenditures incurred in operating pollution control equipment installed prior to the date the notice of noncompliance is received.

[6] Information on the investment tax credit is contained in the Internal Revenue Service Code, Chapter 1, Subpart B—*Rules for Computing Credit for Investment in Certain Depreciable Property.*

[7] In addition to the two listed restrictions, investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used. This adjustment is made automatically by the computer program.

[8] The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation. Thus, the adjustment described above should be ignored for qualified rehabilitation investments.

[9] The formula for determining the investment tax credit in a state having a tax credit is:

$$I_{ITC} = ITC_{FEDERAL} + (1 - \text{Tax Rate}_{FEDERAL}) * ITC_{STATE}$$

For the Fertilizer Company, the entire investment qualifies for the investment tax credit. If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[10]

Income Tax Rate

The income tax rate to be entered into the program must be the marginal rate—that is, the rate which the firm would pay on an additional dollar of income. The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local tax rates. The state and local tax rates should not include sales tax, inventory tax, charter tax or taxes on property. If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate. Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense.

In most cases involving large firms, the marginal federal tax rate will be 46 percent.[11] Small corporations and some partnerships or privately-owned firms could have lower rates. In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes. The steps for calculation are as follows:

- The marginal federal, state and local income tax rates are determined.
- The local tax rate is adjusted for the state tax.[12]
- The local and state tax are adjusted for the federal tax.
- The effective tax rate is computed.

Exhibit II–4 contains a calculation of the tax rate for the Fertilizer Company.

Inflation Rate

This is the estimated future increase in the capital and operating cost of pollution control equipment.[13] The inflation rate to be used in the Fertilizer Company penalty calculation is 8.6 percent. This was the compound annual rate of increase in the Chemical Engineering Plant Cost Inflation Index for the period November 1977 to November 1982.[14]

Exhibit II–4—Calculation of the Tax Rate [15] Fertilizer Company

1. Marginal Federal tax rate, 46%
2. Marginal State tax rate, 5%
3. Marginal Local tax rate, 2%

Calculation of adjusted local tax: (1−State Tax Rate)×Local Tax Rate=(1−.05)×.02=.95×.02=.019=Adjusted Local Tax Rate

Calculation of adjusted state and local tax: (1−Federal Tax Rate)×(State Tax Rate+Adjusted Local Rate)=(1−.46)×(.05+.019)=(.54×.069=.0373=Adjusted Local and State Tax

Calculation of tax rate: 100×(Federal Tax Rate + Adjusted Local and State Tax)=100×(.46+.0373) =100×.4973=49.73=Tax Rate

Discount Rate

The discount rate is an estimate of the firm's cost of new equity capital. For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry and for all manufacturing corporations in Table D of the Federal Trade Commission's *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.* Attachment I contains a copy of Table D for the second quarter of 1982. The higher of the industry average rate of return on equity or the all-manufacturing rate of return on equity is used as the discount rate.

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the *Standard Industrial Classification Manual,* published by the Office of Management and Budget, should be used.[16]

The FTC does not report rates of return on equity for public utilities. For these organizations, the annual percent return on net worth published in the most recent issue of Standard and Poor's *Industry Survey* should be used as the discount rate. Attachment I includes a table listing this information for 1978 to 1982.

EXHIBIT II–5.—FERTILIZER COMPANY, JULY 1978, AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

Year	Quarter	Return on equity (percent)	
		Chemicals & Allied products	All manufacturing
1977	3	14.8	13.3
	4	13.8	14.4
1978	1	14.3	12.4
	2	16.5	16.6
	3	15.1	14.9
	4	16.3	16.1
1979	1	17.6	15.8
	2	16.3	16.1
	3	15.9	16.3
	4	15.3	15.7
1980	1	16.0	15.4
	2	15.3	13.6
	3	15.0	12.5
	4	13.6	14.0
1981	1	16.6	13.3
	2	15.6	15.6
	3	13.9	13.4
	4	13.3	12.0
1982	1	13.0	10.1
	2	12.2	10.5
Total		304.4	284.0
Average		15.22	14.20

For the Fertilizer Company, the correct industrial category to use is Chemicals and Allied Products. The calculation of the average return on equity for twenty quarters is shown in Exhibit II–5. Since the 15.22 percent rate of return for Chemicals and Allied Products exceeds the average rate of return of 14.20 percent for all manufacturing corporations, the discount rate used is 15.22 percent.

Interest Rate

The interest rate is the current cost of new debt for the firm.[17] Determination of the firm's interest rate requires two steps.

- The quality rating for the firm's bonds is found in Moody's *Bond Record.* If the firm does not have rated debt, an "A" rating is assumed. If it has more than one issue, that with the highest rating is used.
- The most recent yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the *Bond Record.*

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C." The lowest average yield reported is "Baa"; a firm whose bonds have a rating of "Baa" or lower will use the yield reported for the "Baa" average. The bonds are listed in the *Bond Record* in alphabetical order by corporation. Convertible bonds are considered in the same manner as all other bonds.

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[10] Computed as ($500,000 minus 150,000 divided by 500,000 multiplied by 10% equals 7%.

[11] As of January 1982. This rate must be adjusted for future changes in the tax laws.

[12] If the local tax is not deductible from the state tax, the numbers should be added.

[13] *Chemical Engineering,* McGraw Hill; Inc., biweekly issues, 1978–1982. The compound rate of increase is computed as:

$[[(\text{Index in Final Month})/(\text{Index in Initial Month})]^{1/N} - 1] \times 100$

Where N equals the number of years between the first and last months.

[14] The inflation rate of 8.6 percent is only applicable to the example described in the manual. Actual penalty determination will require calculation of the inflation rate using the above formula and the Plant Cost Inflation Indices for the most recent month and the month five years prior to the most recent month.

[15] This calculation uses Worksheet C in Attachment IV.

[16] If the firm is a subsidiary of a larger corporation, the SIC category used should be the category appropriate for the smallest entity with audited financial statements which includes the source not in compliance.

[17] This discussion assumes that Industrial Development Bonds (IDB's) are not used. If IDB's are sold to finance the pollution control investment, see Section V.

Note that the interest rate is *not* taken from the so-called coupon rate on the bond. For example, in Exhibit II–6, rates of 9.75 percent and 4.5 percent are listed. These are historical rates which were in effect at the time the bonds were issued. They do not reflect current market rates.

The *Bond Record* reports a number of different yields. If the firm is a utility, the Public Utility Average is used. If the firm is not a utility, the Industrial Bond Average is used.

For the Fertilizer Company, the debt was not rated, so the most recent yield reported for the industrial "A" bonds is used (13.81%). Attachment II contains the average bond yields as reported in a recent issue of the *Bond Record*.

Preferred Dividend Rate

The method used for determining the preferred dividend rate is identical to that used to select the interest rate. The quality rating of the firm's preferred shares is found in Moody's *Bond Record* in the Preferred Stock section. If the stock is not rated, an "a" rating is assumed.

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities. However, these figures should be used for non-utility firms as well. If the stock has a rating of "baa" or lower, the firm should use the "baa" average yield. Firms with preferred stock rated "aa" or higher should use the "aa" yield. The latest monthly average is used and entered exactly as shown in the averages. Attachment III contains an example of the *Bond Record* preferred averages.

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 12.13 percent, the rate found by using the return on "a" rated preferred stock.

Equity Share of Investment

This is the percentage amount of equity in the firm's capital structure. The capital structure of the firm is the dollar amount invested in the firm for periods over one year. Thus it does not include current liabilities or deferred federal income tax.

The equity share of the investment is calculated using data contained in the firm's five most recent annual reports.[18]

The procedure involves the following steps:

- *Step 1.* The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt. This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock, and long term debt. If Treasury stock is shown as an *asset* on the balance sheet, it should be subtracted from the total capital.
- *Step 2.* The dollar amount of all equity accounts except preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step. This is the equity share of the investment for the year.
- *Step 3.* The equity shares for each of the five most recent years are averaged to yield an equity share for input to the penalty calculation.

Preferred Stock Share of the Investment

The computation of the preferred stock share of the investment is analogous to the computation of the equity share of the investment, as described above. The sum of all preferred stock accounts is divided by the total capital computed in Step 1 above for each of the five most recent years. These figures are then averaged to yield a preferred stock share for input to the penalty calculation.

Debt Share of the Investment

The sum of all long-term debt accounts is the amount of debt in the capital structure each year. This sum is also divided by the yearly total capital found in Step 1 above yielding the debt share of the investment for the year. These figures are then averaged to yield a debt share for input to the penalty calculation.

The sum of the equity share, the debt share, and the preferred share of the investment must equal one hundred percent.

The balance sheet of the hypothetical Fertilizer Company is shown in Exhibit II–6. Exhibit II–7 illustrates the calculation of the equity, preferred stock, and debt share of the investment for a single year.

Depreciation Life in Years

This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes. It depends on the class of asset to which the control equipment belongs. Current tax law provides for "recovery periods" of 3, 5, 10, and 15 years. The IRS has published regulations specifying the rules for assignment of all assets to one of these classes. The Fertilizer Company's pollution control equipment falls in the 5 year class.

The Useful Life in Years

The useful life is used to determine the length of each replacement cycle in the penalty calculation. It is provided by *Revenue Procedure 77–10* under the heading "Asset Guideline Period" (26 CFR 601.105). If this contains a fractional part of a year the number should be rounded up to the next integer. The useful life *must* always be greater than or equal to the depreciation life in years.

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used. This is eleven years. Had it been 11.5 years, it would have been rounded up to twelve.

Exhibit II–6.—Fertilizer Company Balance Sheet, Dec. 31, 1978.

[In thousands]

Assets	
Cash	$18,881
Marketable securities	60,552
Notes and accounts receivable (Net)	79,156
Income tax refunds Inventories	116,940
Prepaid expenses	4,290
Total Current Assets	279,819
Property, plant and equipment	828,703
Less: Reserve for depreciation	423,554
Net Property Account	405,149
Construction funds held by trustee	3,913
Other Assets	83,495
Total Assets	772,376
Liabilities	
Notes payable to bank	122
Accounts Payable & Accruals	54,109
Preferred Dividends Payable	23
Income Tax	28,335
Current Maturities Long Term Debt	8,929
Total Current Liabilities	91,518
Deferred Federal Income Taxes	57,563
4.5% Debentures	21,531

[18] This is available either directly from the firm or, for large corporations, in *Moody's Industrial Manual*. An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation.

If the firm does not have five years of annual reports, a shorter period of time may be used. For firms without audited financial statements, the fraction of preferred stock, debt, and equity used in the penalty calculation will be the five year average preferred stock, debt, and equity share for the firm's industry. This can be calculated from the financial statements provided for the industry by the Federal Trade Commission in its *Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations*.

Firms which are subsidiaries of a larger corporation should use the financial statements of the smallest entity with audited financial statements which includes the source not in compliance.

Exhibit II–6.—Fertilizer Company Balance Sheet, Dec. 31, 1978.—Continued

[In thousands]

9.75% Notes	60,000
Long-term lease obligation	43,932
Pollution control facility revenue bonds	46,000
Other long term debt	9,230
4.5% perferred stock ($100 par)	22,044
Common Stock ($5 par)	100,000
Capital surplus	58,236
Retained earnings	262,799
Total Stockholders: Equity	443,079
Less: Treasury stock	477
Net Stockholders' Equity	442,602
Total Liabilities and Net worth	772,376

Exhibit II–7—Calculation of the Equity, Debt and Preferred Share of the Investment [18] Fertilizer Company (In Thousands)

The first step in obtaining the equity, debt and preferred share of the investment is to sum the equity and long term debt.[20]

4.5% debentures	$21,531
9.75% notes	60,000
Long term lease	43,932
Pollution control revenue bonds	46,000
Other long term debt	9,230
4.5% preferred stock	22,044
Common stock	100,000
Capital surplus	58,236
Retained earnings	262,799
	623,772
Less: treasury stock	(477)
Total long term capital	623,295

The second step is to divide the preferred stock by the total long term capital.

$$\frac{\text{Preferred stock}}{\text{Total long term capital}} = \frac{22{,}044}{623{,}295} = .035 \text{ or } 3.5\%$$

The third step is to take the sum of the long-term debt accounts. Divide this by the total long-term capital.

4.5% debentures	$21,531
9.75% notes	60,000
Long-term lease	43,932
Pollution control revenue bonds	46,000
Other long-term debt	9,230
Total debt	180,693

$$\frac{\text{Total Long-Term Debt}}{\text{Total long-term capital}} = \frac{180{,}693}{623{,}295} = .290 \text{ or } 29.0\%$$

The fourth step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Comon Stock	$100,000
Capital Surplus	58,236
Retained Earnings	262,799
Total	421,035
Less: Treasury Stock	(477)
Total common equity	420,568

$$\frac{\text{Total common equity}}{\text{Total long-term capital}} = \frac{420{,}558}{623{,}295} = .675 \text{ or } 67.5\%$$

Thus, 3.5 percent is the preferred stock share of the investment, 29.0 percent is the debt share of the investment and 67.5 percent is the equity share of the investment for a total of 100.0 percent.

[18] For the purposes of this example, preferred, debt, and equity share are caluclated for one year only. In actual penalty calculations the preferred, debt, and equity share will be the average of the most recent five years.

[20] Deferred taxes are not included in the calculation of the debt, equity, and preferred share of the investment.

Electric Utility Average Return on Common Equity

[Percent]

1978	11.3
1979	11.1
1980	11.4
1981	12.6
1982	12.4

Source: Standard and Poor's *Industry Survey*, Volume 2, Utilities—Electric Chapter, "Key Financial Statistics and Ratios for Investor-Owned Electric Utilities," average return on common equity, September 9, 1982 issue.

Attachment II—Moody's Corporate Bond Yield Average

[Note.—Attachment II shows Moody's Corporate Bond Yield Averages 1974–1980 and is available upon request from EPA. See editorial note following Part 67.]

Attachment III—Moody's Public Utility Preferred Stock Yield Average

[Note.—Attachment III shows Moody's Public Utility Preferred Stock Yield Averages 1975–1982 and is available upon request from EPA. See editorial note following Part 67.]

Attachment IV—Worksheets

This attachment contains worksheets which can be used to calculate input data. Each worksheet will also contain reminders for points which may be overlooked in calculations.

Worksheet A.—Calculation of the Capital Expenditure Input

1. List price or estimated price of the equipment: $
2. Less: Discount from manufacturer = _____
3. Equals net price of equipment =
4. Plus: Sales tax on equipment [1]
5. Plus: Freight and delivery charge =
6. Plus: Installation charge = _____
7. Equals estimated cost of equipment installed =
8. Plus: Value of lost production =
9. Plus: Cost of building construction or modifications = _____
10. Equals Total Capital Expenditure = $

Note: Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

[1] Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 — Tax Rate) and subtracted from the cost of the equipment rather than added as in Step 4.

Qualified Percentage Investment Tax Credit

Line 7 / Line 10 × 10 = _____%

If the depreciable life of the equipment is les than 7 years, this figure must be adjusted as described on page II–16.

Worksheet B.—Operating and Maintenance Expense [1]

1. Annual Labor Expense:
   _____ hours × $_____ per hour = _____
2. Power Cost:
   _____ kwh × $_____ per kwh = _____
3. Water Cost:
   _____ gallons × $_____ per gallon = _____
4. Raw Materials and Supplies
   _____ lbs. × $_____ per lb. = _____
5. Yearly Increase in Property Tax = _____
6. Cost of Production Lost Due to Maintenance or Use of Equipment = _____
7. Total Cost (1 + 2 + 3 + 4 + 5 + 6) = _____
8. Less: Value of Byproducts:
   _____ lbs at $_____ per lb. = _____
9. Annual Operating and Maintenance (7–8) = _____
10. Average Monthly Operating and Maintenance (9 ÷ 12) = _____ $

[1] All costs should be stated in dollars as of the date compliance is expected to be achieved.

Worksheet C.—Calculation of Income Tax Rate

1. Marginal Federal Tax Rate _____
2. Marginal State Tax Rate _____
3. Marginal Local Tax Rate _____

Calculation of Adjusted Local Tax
(1—State Tax Rate) × Local Tax Rate
= (1—_____) × _____
= _____ × _____
= _____ = Adjusted Local State Tax Rate

Calculation of Adjusted State and Local Tax
(1—Federal Tax Rate) × (State Tax Rate + Adjusted Local Rate)
= (1—_____) × (_____ + _____)
= _____ × _____
= _____ = Adjusted Local State Rate

Calculation of Tax Rate
100 × (Federal Tax Rate + Adjusted Local and State Tax)
= 100 × (_____ + _____)
= 100 × _____
= _____ = Tax Rate

Worksheet D—Weighted Average Interest Rate

1. Total Capital Expenditure _____
2. Debt Percent of the Investment _____
3. Amount of the Investment Financed with Debt _____

(1) ____ * (2) ____ ÷ 100 = ____

4. Dollar Value of issued Industrial Development Bonds _____
5. Interest Rate on Corporate (or Public Utility) Bonds _____
6. Interest Rate on Industrial Development Bonds _____

A. If (4) is larger than or equal to (1), the interest rate entered into the computer is (6).

B. If (4) is larger than (3), the interest rate entered into the computer is (6).

C. If (4) equals zero, the interest rate entered into the computer is (5).

D. If A, B, and C are not true, the interest rate is found using the following formulae:

7. Portion of investment financed with Industrial Development Bonds
(4) / (1) = (7) ____

8. Weighted Average Interest Rate
(7) ____ * (6) ____ +
1–(7) ____ * (5) ____ =
____ + ____ = (8) ____

The interest rate entered into the computer is (8).

Section III—Using the Computer Program

Gaining Access to the System

The computer program used to calculate the noncompliance penalty is written in the language FORTRAN. It is designed to operate on a time sharing computer only. The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system. The following description of the accessing procedure should only be considered a general guide to time sharing and not as an exact procedure for any one system.

1. *Switch on the terminal.* The on/off switch is usually located on the keyboard, but same models have switches on the top or back of the terminal.

2. *Contact the computer system.* This can be done by one or two methods: an acoustic coupler or a so-called "hardwire" connection. The hardwire is easiest to use; it only requires pushing the return" key on the keyboard. The computer will then respond with some indication that contact is established.

If an acoustic coupler is used, the computer's telephone number must be dialed. When the system responds, a loud piercing sound is heard. At this time, the telephone receiver is placed in the coupler and the "return" Key is pushed. The computer will respond as in the case of the hardwire.

3. *Account and code number.* At this time the computer will ask for an account number. This number is specific to the computer system and must be known beforehand. The number is entered by typing it on the key board and pressing the "return" key. The same procedure applies to the code number. After every entry, push "return."

4. *Obtaining access to the FORTRAN language.* Different computers have different ways of indicating that FORTRAN is to be used. The specific command will vary, but it is probably something like: USE 16K FORTRAN or LOAD 16K FORTRAN. The computer will then signal that the command is understood.

5. *Loading program.* The program must now be retrieved from its storage area within the computer and be loaded into the working area. The command that accomplishes this is PENALTY. The computer will respond with a message that the command is understood and that the program is ready to be used.

6. *Running the program.* The command RUN will start the program. From this point forward, the computer will ask specific questions. Each time a question is answered, the "return" key must be pushed.

Once the program PENALTY has been loaded into the computer, it is necessary to enter the data. The following section describes the data entry procedure.

Entering The Data

It is important in using a computer to understand that the computer requires a specific form of data entry. For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry *10.0* is acceptable. Entries such as *10%*, *TEN*, and *.10* are all incorrect. The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0.10 percent and used in the computation as that value. The result will be an incorrect figure for that penalty.

If a wrong number is entered and the return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number. The procedure for deleting a number before the return is pushed varies with the computer system. The deletion procedure should be checked before the program is run. If during data entry a wrong number is entered and the return key is pushed, operation of the program can be halted by pushing the *Break* key. The computer will respond by printing *STOP* and some system accounting data. To start the program again, type *RUN*.

The following paragraphs discuss general rules to be followed in entering data into the computer program. Exhibit II–1 contains an example of the completed entry for the Fertilizer

Company. Figures which are underlined have been entered by the program user. After each line is entered the carriage return should be pressed. It should also be noted that each question asked by the computer must be answered. Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate. Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds. These special cases are discussed in later sections.

1. *Post-Compliance Settlement.* This number is entered only as a 0 or 1. For the Fertilizer Company this is an initial calculation and a 0 is entered.

2. *Limited Life Facility.* This number is entered as 0 of 1. For the Fertilizer Company this is not a limited life facility and a 0 is entered.

3. *Percent Financed by Industrial Development Bonds.* This is entered as a percent. For the Fertilizer Company, a 0 is entered.

Exhibit III—1.—Entering Data

```
        1. Is this an initial penalty calculation
        or a post-compliance adjustment
        calculation? 0=Initial, 1=Post-Com-
        pliance:
?
0
        2. Is this a limited Life Facility?
        1=Yes 0=No
?
0
        3. Percentage financed by industrial
        development bonds=
?
0
        4. Months out of compliance=
?
9
        How many months have precom-
        pliance capital or precompliance O&M
        expenditures?
?
5
        For each month of precompliance cap-
        ital or O&M enter the number of the
        month, the capital expenditure and the
        O&M expense separated by commas.
        Month, Capital, O&M
?
2,166666.67,0
?
4,166666.67,0
?
7,0,100.00
?
8,0,1050.00
?
9,166666.67,740.00
        5. Initial monthly O&M expense=
?
1250.00
        6. Investment tax credit rate=
?
10.0
        7. Income tax rate=
?
49.73
        8. Forecast inflation rate=
?
8.6
        9. Discount rate=
?
15.22
        10. Interest rate=
?
13.81
        11. Preferred stock dividend rate=
?
12.13
        12. Equity share or investment=
?
67.5
        13. Preferred stock share=
?
3.5
        14. Debt share of investment=
?
29.0
        15. Depreciation life=
?
5
        16. Useful life=
?
11
        17. How many months after the first
        day of noncompliance will the ini-
        tial penalty payment be made?
?
0
        18. Do you wish to see a lump sum
        settlement? 1=Yes, 0=No:
?
1
        19. How many months after the first
        day of noncompliance will the lump
        sum settlement be made?
?
0
```

4. *Number of Months Out of Compliance.* This number is entered only as an integer. Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in nine months. This is entered as 9.

Schedule of Precompliance Capital and Precompliance Operating and Maintenance Expenditures. The program will then ask for the number of months the firm will make precompliance capital or operating and maintenance expenditures. For the Fertilizer Company, the firm will make precompliance capital expenditures in months 2, 4, and 9. Precompliance operating and maintenance expenditures will be made in months 7, 8, and 9. Thus there are five months in which either precompliance capital or operating and maintenance expenditures are made (months 2, 4, 7, 8, and 9).

If no precompliance capital expenditures are to be made, the entire capital expenditure is entered in the last month of the noncompliance period. If the Fertilizer Company made no precompliance capital expenditures, the entire $500,000 would be entered in month 9.

The program will then ask for the number of the month, the capital expenditure and the operating and maintenance expenditure separated by commas for each month with precompliance capital or operating and maintenance expenditures. For months which have precompliance capital expenditures but no operating and maintenance expenditure, a zero must be entered for the operating and maintenance expenditure. Similarly, if the firm makes a precompliance operating and maintenance expenditure but no capital expenditure in a month, a zero must be entered for the capital expenditure. All dollar values are entered without dollar signs. The number of cents, however, should be entered following a decimal point.

For the Fertilizer Company, the schedule of precompliance capital and operating and maintenance expenditures is:

Month	Capital expenditure	Operating and maintenance expenditure
2	166,666.67	0
4	166,666.67	0
7	0	100.00
8	0	1,050.00
9	166,666.67	740.00

5. *Initial Monthly O&M Expense.* The initial monthly operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating. For the Fertilizer Company, the initial monthly operating and maintenance expense is $1,250.00.

6. *Investment Tax Rate.* This is entered as a percent and not as a decimal. Thus, for example, 7.5 percent would be entered as 7.5. The program is designed to test for data entered as a decimal and print an error message. In the Fertilizer Company example, the investment tax rate was 10.0 percent.

7. *Income Tax Rate.* This is also entered as a percent. For the Fertilizer Company the tax rate is 49.73 percent.

8. *Inflation Rate.* The inflation rate is entered as 8.6 percent.

9. *Discount Rate.* This is entered as a percent. The lower bound for any discount rate used is the rate of inflation. The program will not accept

discount rates lower than the rate of inflation and will print a message to that effect. If the discount rate entered is lower than the inflation rate, the program will set the discount rate equal to the inflation rate.

For the Fertilizer Company, the discount rate is the higher of the twenty quarter average after-tax return on equity for the chemicals and allied products industry, or the twenty quarter average after-tax return on equity for all manufacturing corporations. This is calculated to be 15.22 percent.

10. *Interest Rate.* The interest rate is entered as a percent. For the Fertilizer Company this is the average return on "A" rated industrial bonds. The latest reported average is 13.81 percent.

11. *Preferred Dividend Rates.* This is entered as a percent. If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero. For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks. It is entered as 12.13 percent.

12. *Equity Share of Investment.* This is entered as a percent. It was computed to be 67.5 percent for the Fertilizer Company.

13. *Preferred Share of Investment.* The preferred share of the investment is entered as a percent. For the Fertilizer Company this was computed at 3.5 percent.

14. *Debt Share of Investment.* This is entered as a percent. For the Fertilizer Company the debt share is 29.0 percent. If the sum of the preferred share, the debt share and the equity share of the investment is not equal to 100.0 percent, an error message is printed.

15. *Depreciation Life in Years.* This number must be entered as an integer. Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was five (5) years.

16. *Useful Life in Years.* The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven (11) years.

17. *Month of Initial Penalty Payment.* The program asks "How many months after the first day of noncompliance will the initial penalty payment be made?" The Fertilizer Company paid the first quarterly penalty on the day the notice of noncompliance was issued. Therefore, a zero (0) was entered into the computer in response to this question.

18. *Lump Sum Settlement.* The firm has the option to have the computer calculate a lump sum settlement. The Fertilizer Company selected this option by entering a 1.

19. *Month of Lump Sum Settlement.* If the firm selects the option of a lump sum settlement (by entering a 1 in response to question 18), the program requests the number of months from the first day of noncompliance the lump sum settlement will be made. The Fertilizer Company wanted to see the value of the lump sum settlement as of the first day of noncompliance. Therefore, a zero (0) was entered into the computer in response to this question.

Error Messages for Data Entry

The program for computing the noncompliance penalty was designed to test for errors in the data as they are entered into the computer. If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected. Examples of such error messages follow.

1. *Equity, Debt and Preferred Share.* The program will print an error message if the sum of the equity share, debt share, and the preferred share of the investment is not equal to 100 percent. This is illustrated in Exhibit III–2.[3]

2. *Entering Data as a Decimal.* An error message will be printed if the investment tax rate is entered as a decimal. This is illustrated in Exhibit III–3.

3. *Inflation Rate Higher Than Discount Rate.* The program will print message if the inflation rate is higher than the discount rate. For this type of error the program continues. If the user wishes to stop the program at this point, the *break* key should be pushed. If the user continues, only the O&M portion of the penalty will be calculated and the discount rate will be set equal to the inflation rate. This is illustrated in Exhibit III–4 where the discount rate of 15.91 percent was erroneously entered as 5.91 percent.

Exhibit III–2—Equity Debt and Preferred Share of Investment Greater Than 100 Percent

```
        12. Equity share of investment=
?
65.0
        13. Preferred stock share=
?
3.5
        14. Debt share of investment=
?
29.0
        Equity + preferred + debt not=100, try again
```

[3] The computer program allows for some rounding errors and hence an error message is not printed if the sum of the debt, equity, and preferred stock shares is within one half of one percent of 100 percent. Thus the error message will be printed only if the sum exceeds 100.5 percent or is below 99.5 percent.

Exhibit III–3—Data Entered as a Decimal and the Warning Message

```
        6. Investment tax credit rate=
?
.10
        7. Income tax rate=
?
49.73
        8. Forecast inflation rate=
?
8.6
        9. Discount rate=
?
15.22
        10. Interest rate=
?
13.81
        11. Preferred stock dividend rate=
?
12.13
        18. Do you wish to see a lump sum settlement? 1=Yes, 0=No:
?
1
        19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
0
        Note that at least one of your data entries has a percentage value of less than one
```

Exhibit III–4—Entering Inflation Rate That is Higher Than Discount Rate

```
        8. Forecast inflation rate=
?
8.6
        9. Discount rate=
?
5.91
        Discount rate not greater than inflation rate. Only the O&M component of the penalty will be calculated. The discount rate is set equal to the inflation rate.
```

Output From the Program

The output from the computer program is structured in the following way.

- The amortization and depreciation method used in calculating the penalty is printed. For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used.

• The program prints the quarterly penalty payments the firm must make during the period of noncompliance.

• If the option to compute a lump sum settlement is selected, the program prints the value of the lump sum settlement.

• The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III–5.

The output printed in Exhibit III–5 illustrates only a few of the possible variations in penalty calculation possible with the computer program. The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output.

Exhibit III–5—Calculation of Noncompliance Penalty

Month and Payment

1—$4,945.15
4—$5,048.21
7—$5,153.41
The value of the noncompliance penalty computed as of 0 months after the date of noncompliance is $14,618.74

1. *Quarterly Penalty Payments.* Exhibit III–5 illustrated the payment made if the firm paid the first quarterly penalty on the day that the notice of noncompliance was issued. The first quarterly payment was $4,945.15. The second payment would be made ninety days later and it would equal the penalty shown for the fourth month $5,048.21. The final payment is in month seven and equals $5,153.41.

A more realistic example might involve a three-month delay in the first payment. In this case, the output would appear as in Exhibit III–6. The first penalty payment includes the amounts that should have been paid at the first and fourth months, escalated forward to the time of actual payment. Such escalation is required to keep the present value of all penalties paid equal to the present value of savings from noncompliance. The next quarter penalty payment is due three months later, putting the firm back on the original penalty schedule. The present value of the payment in Exhibit III–6 is equal to the present value of the penalty payments in Exhibit III–5.

2. *Lump Sum Settlement.* A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for three quarters, it could either pay the three quarterly payments shown in the output or pay the lump sum settlement. In terms of present value, the amount eventually paid is the same in each case. Exhibit III–7 illustrates a six month delay in the lump sum settlement.

Exhibit III–6—Three-Month Delay in Payment of Penalty

17. How many months after the first day of noncompliance will the initial penalty payment be made?
?
3

18. Do you wish to see a lump sum settlement? 1=yes, 0=no:
?
1

19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
0

Month and Payment

4—$10,171.63
7—$5,153.41
The value of the noncompliance penalty computed as of 0 months after the date of noncompliance is $14,618.74

Exhibit III–7—Six Month Delay in Payment of Lump Sum Settlement

19. How many months after the first day of noncompliance will the lump sum settlement be made?
?
6

Month and Payment

4—$10,171.63
7—$5,153.41
The value of the noncompliance penalty computed as of 6 months after the date of noncompliance is $15,691.71

Thus, for the Fertilizer Company, delaying the lump sum settlement six months increased the settlement to $15,691.71 from the $14,618.74 shown in Exhibit III–5. The $1,072.97 difference between the lump sum settlement delayed six months and the settlement paid on the date of noncompliance is the result of escalating the initial lump sum settlement forward to the time of actual payment.

Only a single payment is required if the first penalty payment is delayed longer than the firm is out of compliance. In this event, the firm will not make quarterly payments but will make one lump sum settlement. Exhibit III–8 shows the output from the program if a ten-month delay in penalty payment occurs. The Fertilizer Company was out of compliance nine months.

3. *New Computation.* The user has several options here. By typing in 0 (zero) and pushing the carriage return, the program can be terminated. Typing 999 will result in a printing of all of the data that are currently in the program; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III–9.

If changes are desired in the input, the following steps must be taken:

• Enter the number of changes desired.

• For each change, the computer will respond with a question mark. When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate.)

• The computer will print the name of the item. Enter the new data desired and push the carriage return.

An example of changing inputs is shown in Exhibit III–10.

Exhibit III–8—Penalty Payment When Delay is Longer Than Noncompliance Period

17. How many months after the first day of noncompliance will the initial penalty payment be made?
?
10

Month and Payment

11—$16,450.42
The value of the noncompliance penalty computed as of 6 months after the date of noncompliance is $15,691.71

Exhibit III–9—Printing Data That Have Been Entered in Program

How many variables do you wish to change?
?
999

*

1. Is this an initial penaty calculation or a post-compliance adjustment calculation? 0=Initial, 1=Post-Compliance: 0.
2. Is this a limited life facility? 1=Yes 0=No 0.
3. Percentage financed by industrial development bonds=0.0
4. Months out of compliance=9

Precompliance Expenditures

Month	Capital	O&M
2	166666.67	0.0
4	166666.67	0.0
7	0.0	100.00
8	0.0	1050.00
9	166666.67	740.0

5. Initial Monthly O&M expense=1250.00.
6. Investment tax credit rate=10.00.
7. Income tax rate=49.73.
8. Forecast Inflation rate=8.60.
9. Discount rate=15.22.
10. Interest rate=13.81.
11. Preferred stock dividend rate=12.13.
12. Equity share of investment=67.50.
13. Preferred Stock Share=3.50.

14. Debt share of investment=29.00.
15. Depreciation life=5.
16. Useful Life=11.
17. How many months after the first day of noncompliance will the initial penalty payment be made? 0.
18. Do you wish to see a lump sum settlement? 1=Yes, 0=No: 1.
19. How many months after the first day of noncompliance will the lump sum settlement be made? 0.

Exhibit III–10.—Altering Data in the Program

```
        How many variables do you wish to
        change?
?
3
        Enter a list of variables to be changed
        separated by commas.
?
10, 13, 14
        10. Interest rate=
?
13.81
        13. Preferred stock share=
?
3.50
        14. Debt share of investment=
?
29.00
```

Section IV—Calculation of the Post-Compliance Settlement

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather then the estimates used in the original penalty calculation. More current estimates of the inflation rate, the discount rate, and the capital structure of the firm are also used. For this purpose, ten types of data are needed:

- A schedule of actutal capital expenditures made by the firm in reaching compliance.
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance.
- A new estimate of post-compliance monthly operating and maintenance expense based on the firm's experience and any additional information which becomes available prior to the post-compliance settlement.
- The compound annual inflation rate over the most recent sixty months.
- The discount rate averaged over the most recent twenty quarters.
- The average equity, preferred stock, and debt share of the capital structure over the most recent five years.
- The number of months between the day of compliance and date of post-compliance settlement.
- A post-compliance settlement interest rate chosen by the Department of Treasury for overpayments.
- A listing of the actual penalty payments made by the firm and the months in which they were made.
- The actual portion of the investment financed with industrial development bonds.[4]

In addition to these new data, it will be necessary to have available the remaining financial parameters originally used to calculate the noncompliance penalty for the firm. To continue the example of the hypothetical Fertilizer Company, Exhibit IV–1 contains the date originally used to calculate the noncompliance penalty.

Preparing New Data for Entry Into the Program

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III–1 to III–3. After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement. The computer program will then ask for the data requested in the initial penalty calculation. These data should be entered in the following manner.

1. *Limited Life Facility.* The same response as entered in the initial calculation should be entered. For the Fertilizer Company this value is zero (0).

2. *Industrial Development Bonds.* The actual percentage of the investment financed with industrial development bonds should be entered. For the Fertilizer Company this value is zero (0).

3. *Months Out of Compliance.* The actual number of months the firm is out of compliance should be entered. The Fertilizer Company was actually out of compliance nine (9) months.

4. *Months With Precompliance Expenditures.* The actual number of months with precompliance capital or operating and maintenance expenditures should be entered. The Fertilizer Company made precompliance expenditures in three (3) months.

Exhibit IV–1—Fertilizer Company, July 1979, Data Used for Original Noncompliance Penalty Calculations[5]

```
        How many variables do you wish to
        change?
?
999
```

1. Is this an initial penalty calculation or a post-compliance adjustment calculation? 0=initial, 1=post-compliance: 0
2. Is this a limited life facility? 1=Yes 0=No 0
3. Percentage financed by industrial development bonds=0.0
4. Months out of compliance=9

Month	Capital	O&M
2	166666.67	0.0
4	166666.67	0.0
7	0.0	100.00
8	0.0	1050.00
9	166666.67	740.0

5. Initial monthly O&M expense=1250.00
6. Investment tax credit rate=10.00
7. Income tax rate=49.73
8. Forecast inflation rate=8.60
9. Discount rate=15.22
10. Interest rate=13.81
11. Preferred stock dividend rate=12.13
12. Equity share of investment=67.50
13. Preferred stock share=3.50
14. Debt share of investment=29.00
15. Depreciation life=5
16. Useful life=11
17. How many months after the first day of noncompliance will the initial penalty payment be made? 0
18. Do you wish to see a lump sum settlement? 1=Yes, 0=No: 1.
19. How many months after the first day of noncompliance will the lump sum settlement be made? 0

5. *Schedule of Precompliance Expenditures.* The actual precompliance expenditures should be entered. Exhibits IV–2 and IV–3 present the actual precompliance capital and operating and maintenance expenditures, respectively, made by the Fertilizer Company. These expenditures were:

Month	Capital expenditure	Operating and maintenance expenditure
7	$184,050.00	$0.00
8	184,050.00	679.96
9	184,050.00	1,324.40

6. *Initial Monthly O&M Expense.* An estimate of the average monthly operating and maintenance expense which will be incurred over the first year of operating the pollution control equipment should be entered. This can be the estimate used in the initial calculation or, if better information is available, an updated estimate based on this better information. Exhibit IV–4 illustrates the new estimate of monthly

[4] If this portion differs from the original estimate, the interest rate must be adjusted as discussed below.

[5] Listed during original penalty calculations by typing 999 when changes in input data were requested.

operating and maintenance expense for the Fertilizer Company. The new estimate is $1,333.33.

7. *Investment Tax Credit Rate.* This should be the actual investment tax credit as a percent of the initial investment. In the case of the Fertilizer Company this will be line (7) of Exhibit IV–2 divided by line (10) of Exhibit IV–2 multiplied by the statutory rate of 10 percent. This will be 10 percent since the entire investment qualifies for the full investment tax credit.

8. *Income Tax Rate.* The income tax rate used in the initial calculation should be entered. For the Fertilizer Company this rate is 49.73 percent.

9. *Inflation Rate.* The most recent five year average inflation as recorded by the *Chemical Engineering* plant cost index should be entered. In the Fertilizer Company example, this is 8.6 percent.

10. *Discount Rate.* The most recent five year average of the discount rate should be calculated using the data source which was used in the initial calculation. For the Fertilizer Company the discount rate is 15.22 percent.

Exhibit IV–2—Fertilizer Company Calculation of Actual Capital Expenditure, June 1, 1980

1. List price or estimated price of the equipment=	$536,588.92
2. Less: Discount from manufacturer=	(10,731.78)
3. Equals net price of equipment=	525,857.14
4. Plus: Sales tax on equipment [6]=	26,292.86
5. Plus: Freight and delivery charge=	0
6. Plus: Installation charge=	0
7. Equals estimated cost of equipment installed=	$552,150.00
8. Plus: Value of lost production=	0
9. Plus: Cost of building construction or modifications=	0
10. Equals total capital expenditure=	$552,150.00

The capital expenditures were made in three equal monthly payments of $184,050.00 starting in the seventh month of compliance.

[6] Sales tax in this case was not subtracted from revenue in the year of purchase.

Exhibit IV–3—Actual Monthly Pre-Compliance Operating and Maintenance Expense, Fertilizer Company, June 1, 1980

Pre-compliance Operating Expense:		
Months 1–9		$0
Month 10		
Labor (84 hrs @ $10)	$840.00	
Power (1200 kwh @ .0333 kwh)	39.96	
Total		$879.96
Month 11		
Labor (110 hrs @ $10)	1,100.00	
Power (6739 kwh @ .0333 kwh)	224.40	
Total		$1,324.40

EXHIBIT IV–4—Fertilizer Company Operating and Maintenance Expense, June 1, 1980

1. Annual Labor Expense: *1072* Hours×*$10.81* per hour=	$11,588.32
2. Power Cost: *80991.5* kwh×$.038 per kwh=	3,419.68
3. Water Cost: ——— gallons×$———per gallon=	0
4. Raw Materials and Supplies: *1200* lbs.×*$1.20 per lb.*=	1,440.00
5. Yearly Increase in Property Tax=	0
6. Cost of Production Lost Due to Maintenance or Use of Equipment=	0
7. Total Cost (1+2+3+4+5+6)=	16,448.00
8. Less: Value of Byproducts *800* lbs. at *$.56* per lb.=	(448.00)
9. Annual Operating and Maintenance (7–8)=	16,000.00
10. Average Monthly Operating and Maintenance (9÷12)=	1,333.33

11. *Interest Rate.* The interest rate used in the initial calculation should be entered unless the amount of industrial development bonds sold differs from the estimated amount used in the initial penalty calculation. If the amount of industrial development bonds sold differs from the estimated amount, the interest rate must be altered to reflect this.

To re-estimate the interest rate, the total capital expenditure and the dollar value of issued industrial development bonds should be updated on Worksheet D, and the interest rate should be recalculated. (See Worksheet D, lines 1 and 3.) The interest rates on corporate bonds and industrial development bonds entered on the worksheet should not be updated.

For the Fertilizer Company, the interest rate used in the initial calculation, 13.81 percent, is entered.

12. *Preferred Stock Dividend Rate.* The rate used in the initital calculation should be entered. For the Fertilizer Company, the preferred stock dividend rate is 12.13 percent.

13. *Equity Share, Debt Share, and Preferred Stock Share of the Investment.* The equity, debt, and preferred stock share should be calculated as illustrated in Section II using the most recent five years of annual statements. The Fertilizer Company's five year average equity share, preferred stock share, and debt share are 67.5 percent, 3.5 percent, and 29.0 percent, respectively.

14. *Depreciation Life.* The depreciation life used in the initial calculation should be entered. This is five (5) years for the Fertilizer Company.

15. *Useful Life.* The useful life used in the initial calculation should be entered. This is eleven (11) years for the Fertilizer Company.

After these data are provided, the computer program will ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following manner:

1. *Number of Penalty Payments Made by the Firm.* This is the actual number of payments made by the firm. If more than one payment is made in a month, they should be totaled and counted as one payment.

2. *Month of Penalty Payment.* This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one. If a six month delay in payment occurred, a seven would be entered.

3. *Actual Penalty Payment.* This is the dollar amount of the penalty actually paid by the firm in each month. The payment entered should not include any of the penalty for late payment. The data entered in the Fertilizer Company example are identical to the penalties calculated in the last section and shown in Exhibit III–5. They are:

Month	Penalty payment
1	$4,945.15
4	5,048.21
7	5,153.41

The program now asks for the Treasury interest rate to be used in the calculation of the interest on overpayments [7] and the number of months from compliance until settlement. These data are entered in the following manner.

1. *Treasury Interest Rate.* This is an annual interest rate set by the Secretary of the Treasury for the calculation of interest on overpayments. It is entered as a percent. For the Fertilizer Company, the rate chosen was 15.22 percent.

2. *Months From Compliance to Settlement.* The firm should enter the number of months from the date it comes into compliance to the date of the post-compliance settlement. In the example, the post-compliance settlement was made two months after the Fertilizer Company came into compliance.

Exhibit IV–5 illustrates all the input for the post-compliance settlement for the Fertilizer Company.

[7] The Treasury has determined that the interest rate used to calculate the interest owed on underpayments will be the discount rate that has already been entered into the computer.

Output from the Post-Compliance Settlement Calculation

The output from the post-compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance. The output consists of two parts:

- Printing of the penalty paid in each month and the penalty determined from actual expenditures. The difference betweeen the acutal penalty and the payment made by the firm is calculated in each month.
- The settlement due EPA or due to the firm is calculated.

The output from the post-compliance settlement for the Fertilizer Company is shown in Exhibit IV–6. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post-compliance penalty calculation. The second column contains the actual payment made by the firm. The third column is the penalty based on actual expenditures made by the firm coming into compliance.

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures. The difference between the payment made and the actual penalty is then charged interest at the rate specified by the Treasury for overpayments if the penalty paid exceeds the actual penalty or at the discount rate if the penalty paid is less than the actual penalty.[8]

Exhibit IV–5.—Input for Calculation of Post-Compliance Settlement

1. Is this an initial penalty calculation or a post-compliance adjustment calculation? 0=Initial, 1=Post-Compliance:

?
1

Items 4 and 5 should show amounts actually expended.

2. Is this a limited life facility? 1=Yes 0=No

?
0

3. Percentage financed by industrial development bonds=

?
0

4. Months out of compliance=

?
2

How many months have precompliance capital or precompliance O&M expenditures?

?
3

For each month of precompliance capital or O&M enter the number of the month, the capital expenditure and the O&M expense separated by commas. Month, Capital, O&M

?
7,184050.00,0
?
8,184050.00,879.96
?
9,184050.00,1324.40

5. Initial monthly O&M expense=

?
1333.33

6. Investment tax credit rate=

?
10

7. Income tax rate=

?
49.73

8. Forecast inflation rate=

?
8.6

9. Discount rate=

?
15.22

10. Interest rate=

?
13.61

11. Preferred stock dividend rate=

?
12.13

12. Equity share of investment=

?
67.5

13. Preferred stock share=

?
3.5

14. Debt share of investment=

?
29.0

15. Depreciation life=

?
5

16. Useful life=

?
11

20. How many penalty payments were made?

?
3

20. Payment number 1: enter month, amount

?
1,4945.15

20. Payment number 2: enter month, amount

?
4,5048.21

20. Payment number 3: enter month, amount

?
7,5153.41

21. Treasury interest rate=

?
15.22

22. Months from compliance until adjustment=

?
2

Exhibit IV–6—The Post-Compliance Settlement

Month	Paid	Penalty	Due EPA	Due firm
1	4945.15	7605.86	2660.71	0.0
4	5046.21	7764.37	2716.16	0.0
7	5153.41	7926.17	2772.76	0.0

Adjustment due EPA=8956.20

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance. The total post-compliance settlement paid by the firm to EPA is $8,956.20.

Section V—Special Conditions

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately-owned and when compliance is achieved by modification of existing plant and equipment. In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations.

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds.
- The source is operated by a local, state or federal government.
- The source has a limited useful life.

The noncompliance penalty in all three cases is calculated using the program PENALTY. However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations. The following section describes special data requirements and modifications in data entry. It should be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required.

Industrial Development Bonds

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at

[8] The method for calculating the interest on the amount of overpayment or underpayment is described in detail in Section V of the Technical Support Document.

an interest cost lower than the current rate on industrial bonds.

This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bondholder are exempt from federal income tax. The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often a few percentage points below corporate debt of similar quality.

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used. For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax credit. The computer program will automatically pro-rate the investment tax credit. The user must provide two types of data.

- The percentage of the investment financed by industrial development bonds.
- The weighted average interest rate for the investment.[9]

Data are gathered for the calculation of the penalty in the same manner as described in Section II. In addition, the user must perform the following calculations.

1. *Percent financed with industrial development bonds.* This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment. In the Fertilizer Company example, the estimated capital investment was $500,000. If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty. This would be entered as *40.0.* If the percentage exceeds one hundred, *100.0* should be entered.[10]

2. *Interest rate on industrial development bonds.* The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris, Upham & Co., in the *Credit Market Comment.* The Review is published weekly and the current yield on bonds is printed on the last page. The most recent yield published will be the interest rate used for industrial development bonds.

There are thus only two changes in the data entered for industrial development bonds. A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is the weighted average calculated using Worksheet D of Section II. All other data entry remains the same.

Government-Owned Facilities

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated. In addition, the discount rate for all cash flows is entered at ten percent. Exhibit V–1 shows the data entry procedure for noncomplying sources owned by governments. Data labeled "no change" are calculated using the methods described in Section II.

Facilities With Limited Useful Lives

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives. In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used. Capital and operating and maintenance cost estimates are made based on what it *would cost* to bring the source into compliance and the calculation proceeds in the normal manner. In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month. There is no post-compliance settlement.

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present. In such cases the program will:

- Ask if the calculation is for a limited life facility that is being replaced,
- Request an estimate of the capital and annual operating expenses required to bring the old source into compliance,

Exhibit V–1—Data Entry for Government Facilities

Data category	Program entry
Precompliance Capital Expenditures	[1]
Precompliance Operating and Maintenance	[1]
Initial Monthly Operating and Maintenance	[1]
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	[1]
Discount Rate	10.0
Interest Rate	0
Preferred Dividend Rate	0
Equity Share of the Investment	100.0
Preferred Share of Investment	0
Debt Share of Investment	0
Depreciation Life in Years	[1]
Useful Life in Years	[1]

[1] No change.

- Request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,
- Request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- Request an estimate of monthly production costs including pollution control operating and maintenance expenses at the new source.

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures at the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a post-compliance settlement can be made. Such a settlement will consider changes in the compliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out and updates of the monthly production costs, the inflation rate, the discount rate, and the capital structure of the firm.

Appendix C—Computer Program

Note.—EPA will make copies of Appendix C available from: Director, Division of Stationary Source Enforcement, EN–341, 401 M Street, NW., Washington, DC 20460. See editorial note following part 67.

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[9] A worksheet is included in Section II (Worksheet D) to aid in calculating the weighted average interest rate.

[10] The firm may issue bonds in a volume much higher than the capital investment. In this case financing is entered as 100 percent. The program will not accept data higher than 100 percent.

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September 9, 1985

Part III

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158

Reception Facility Requirements for Waste Materials Retained on Board; Interim Rule

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 151 and 158

[CGD 78-035]

Reception Facility Requirements for Waste Materials Retained on Board

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations put into effect the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). MARPOL 73/78 controls the amount of waste materials ships can discharge at sea, and requires reception facilities at ports and terminals to receive materials retained on board as a result of compliance with MARPOL 73/78. The regulations provide criteria for determining the adequacy of reception facilities, and administrative procedures for granting Certificates of Adequacy to ports and terminals.

DATES: Effective March 10, 1986.

Comment Deadline: Written comments must be received on or before December 9, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/22) (CGD 78-035), U.S. Coast Guard, Washington, D.C. 20593. The comments may be delivered to, and will be available for inspection or copying at, the Marine Safety Council (G-CMC/22), Room 2110, Coast Guard Headquarters Building, 2100 Second Street SW, Washington, D.C. 20593. Normal working hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Copies of the final evaluation and the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, it is requested that requests for the final evaluation and the environmental assessment not be included in the comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ellis H. Davison, II or Lieutenant Timothy M. Mallon, Office of Marine Environment and Systems, (G-WPE-3), telephone 202-426-9578. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking (ANPRM) was published in the March 24, 1983 issue of the **Federal Register** (48 FR 12395) that invited comments. The comment period ended on June 22, 1983, a 90 day period, and comments were received from 69 sources, including individuals, businesses, industry organizations, other Federal agencies, and state and local governments.

A notice of proposed rulemaking (NPRM) was published in the June 19, 1984 issue of the **Federal Register** (49 FR 25196) that invited comments. The comment period ended on August 20, 1984, a 60 day period, and comments were received from 75 sources, in the same categories as were received in response to the ANPRM.

A public hearing, announced in the July 24, 1984 issue of the **Federal Register** (49 FR 29809), was held in Washington, D.C. on August 14, 1984. It was attended by 26 members of the public, seven of whom made oral statements.

A public meeting of the National Committee for the Prevention of Marine Pollution (NCPMP) Working Group on Reception Facilities, announced in the September 21, 1984 issue of the **Federal Register** (49 FR 37202), was conducted at Coast Guard Headquarters on October 12, 1984. It was attended by a total of 17 persons that included members of the Working Group and the general public.

Written comments in response to the NPRM received prior to December 4, 1984, and written comments submitted and verbal comments made at the public hearing and NCPMP Working Group public meeting were considered before issuing this interim rule. Individual comments are addressed in the Section-by-Section Analysis, below.

The Coast Guard has consulted with the Administrator of the Environmental Protection Agency, as required by the Act (33 U.S.C. 1905(a)). Comments from EPA officials, including informal comments at meetings and formal comments on a draft of this rulemaking, have been considered before issuing this interim rule.

In reviewing the comments to the proposed regulations, the Coast Guard has reconsidered the assignment for responsibility for reception facility operation contained in proposed § 158.163. Depending on the circumstances, certain aspects of reception facility operation may be beyond the direct, effective control of a "person in charge who holds a Certificate of Adequacy". A Port Authority may hold a Certificate of Adequacy on behalf of a number of terminals in a geographic area, using a number of waste haulers under contract as reception facilities. It may be inappropriate to assess a civil penalty against the Port Authority for the failure of one of the waste haulers to fulfill the appropriate criteria of adequacy. To accommodate this, and other circumstances, the Coast Guard has changed § 158.163(a) so that the person in charge of a port or terminal, or the person who is in charge of a reception facility, may be held accountable for a violation of a requirement under Part 158.

The Coast Guard has determined that it would be impractical and contrary to the public interest to delay the publication of these comprehensive regulations. The U.S. obligation to ensure the adequacy of reception facilities at U.S. ports and terminals, under Annex I Regulation 12 of MARPOL 73/78, was effective on October 2, 1984. To honor this obligation and to minimize the burden of MARPOL 73/78 on oceangoing ships it is important that this program be implemented without further delay. Threfore, these regulations have been designated an "interim rule request for comment" to indicate that further consideration will be given to the assignment of responsibility in § 158.163(a).

Interested persons are invited to comment on the change made to the assignment of responsibility in § 158.163(a) by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number, CGD78-035, and give reasons for their comments on the changes to § 158.163(a). All comments received before expiration of the comment period will be evaluated by the Coast Guard. No additional public hearing is planned.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Ellis H. Davison, II and Lieutenant Timothy M. Mallon, of the Office of Marine Environment and Systems, and Mr. Stanley M. Colby, Project Counsel, of the Office of Chief Counsel.

Background

The purpose of MARPOL 73/78 is the reduction of accidental and operational pollution from ships. In order to reduce operational pollution, MARPOL 73/78 requires that some ship wastes be discharged to reception facilities. It contains two annexes, concerning Oil (Annex I) and Noxious Liquid Substances (Annex II), that must be implemented by countries ratifying MARPOL 73/78 when it enters into force. MARPOL 73/78, including Annex I, into entered force on October 2, 1983. Parties to MARPOL 73/78 are obligated to ensure that adequate reception

facilities for Annex I are available after October 2, 1984. Annex II will become effective on October 2, 1986, unless the parties to MARPOL 73/78 postpone that date. The requirements for reception facilities in Annex II are effective when the Annex itself becomes effective.

Annex I limits the amount of oily wastes that can be discharged into the sea. Waste which may require disposal as a consequence of Annex I will be be derived from the bulk shipment of oil and from the use of oil as a fuel and lubricant in ship's propulsion and auxiliary systems. Reception facilities must be available to receive oily ballast water, oil-contaminated water and concentrated bilge slops which cannot be discharged in accordance with the Annex.

Oil tankers may have a need to dispose of oily ballast water and tank cleaning water. All self-propelled ships accumulate bilge water in their engine rooms, and this bilge water often contains high concentrations of oil resulting from lubricant drippings and other routine losses. Under Annex I, ships may either process this contaminated bilge water to remove the oil, which is then retained on board as a residue for discharge to a reception facility, or they may discharge the contaminated water itself to a reception facility. Fuel oils for diesel propulsion systems and lubricants for both steam and diesel propulsion systems when processed on board ship usually produce an oily residue. Such residues, which cannot be discharged into the sea in compliance with Annex I, must be retained on board or discharged to reception facilites.

Under Regulation 12 of Annex I, adequate reception facilities must provide for the reception of residues and mixtures containing oil in—

(a) All ports and terminals in which crude oil is loaded into oil tankers where such tankers have immediately prior to arrival completed a ballast voyage of not more than 72 hours or of not more than 1,200 nautical miles;

(b) All ports and terminals in which oil other than crude oil in bulk (product) is loaded at an average quantity of more than 1,000 metrics ton (7,000 barrels) per day;

(c) All ports having ship repair yards or tank cleaning facilities;

(d) All ports and terminals which handle ships provided with sludge tanks that meet MARPOL 73/78;

(e) All ports which handle ships retaining oily bilge water and other residues; and

(f) All loading handling combination carriers retaining oily residue on board.

These regulations apply to all ports and terminals used by oceangoing tankers or any other oceangoing ships of 400 gross tons or more, with certain execeptions. The regulations do not apply to those ports and terminals used only by smaller oceangoing ships for two reasons:

a. The regulatory scheme developed for larger ports and terminals would be unnecessarily complex and burdensome for small ports and terminals.

b. The 400 gross ton demarcation for equipment requirements on non-tankers contained in Regulation 9 of Annex I of MARPOL 73/78 provides a logical demarcation line between "large" and "small" oceangoing ships.

It should be noted that these regulations do not exempt oceangoing ships under 400 gross tons from compliance with MARPOL 73/78. If these ships need to discharge oily wastes to reception facilities they may do so at large ports, or there may in fact be reception facilities available in a port not required to hold a Certificate of Adequacy.

The Coast Guard will consider further rulemaking for ports and terminals used exclusively by non-tankers of less than 400 gross tons after an appropriate regulatory scheme can be developed.

Annex II—Noxious Liquid Subtances

The ANPRM addressed Annex II of MARPOL 73/78, and many comments to the ANPRM concerned issues related to this Annex. Changes to Annex II are being considered by the International Maritime Organization (IMO) Marine Environment Protection Committee and Sub-committee on Bulk Chemicals. Uncertainty as to the outcome of these changes makes a detailed approach to Annex II reception facilities impractical at this time. Therefore, the detailed proposal for implementing Annex II will be made in a separate notice of proposed rulemaking at a later date.

Need

This rulemaking implements those parts of MARPOL 73/78 which require contracting states to ensure that reception facilities are available to receive wastes from ships, as described above. The Act to Prevent Pollution from Ships (the Act) (94 Stat. 2297, 33 U.S.C. 1901), which is the implementing legislation for MARPOL 73/78, specifically directed the establishment of regulations setting criteria for determining the adequacy of reception facilities and procedures for certifying a port or terminal as having adequate reception facilities. The Act applies only to "seagoing" ships (33 U.S.C. 1903(a)). In order to be consistent with other regulations implementing MARPOL 73/78, as published in the **Federal Register** of October 6, 1983 (48 FR 45704), this rule uses the term "oceangoing" ship instead of "seagoing" ship. In defining the term "oceangoing" ship § 158.120 incorporates 33 CFR 151.05(j), which reads, including the Note, as follows:

(j) "Oceangoing" ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the territorial sea of the United States as defined in § 2.05 of this chapter; or

(5) Is operated under the authority of a country other than the United States.

Note.—A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada; is not an "oceangoing" ship.

Section-by-Section Analysis

1. *Section 151.09(f)*—a. Four commenters addressed the notification requirements proposed in § 151.09(f)(2). One recommended that the 24 hour notification be changed to 72 hour notification if a mobile reception facility is used. Two recommended 48 hours, and one recommended that tankers on voyages of less than 36 hours be exempted from the requirement. The Coast Guard does not agree with the commenters and has retained the 24 hour notification. Coast Guard experience has shown that most ships are capable of predicting their arrival at least 24 hours in advance, in complying with the requirements of 33 CFR 160.207. The Coast Guard has also found that pollution clean-up contractors, many of whom will be supplying mobile reception facilities, are capable of responding well within 24 hours of notice of a need for their services. In addition, the requirement is compatible with other Coast Guard advance notice regulations, thus easing the burden on the reporting ship. If 24 hour notice is impracticable for a reception facility, a wavier of that criteria in § 158.200(a) would be available under § 158.150.

b. One commenter suggested that proposed § 151.09(f)(2)(i) was subject to misinterpretation, because it was unclear whether the estimated duration of the discharge or the time of day that the ship would be ready to discharge was required. The Coast Guard agrees

with this comment and has clarified the text to indicate that the time of day when the ship would be ready to discharge is required.

c. The Independent Liquid Terminals Association (ILTA) and three other commenters requested that additional information be provided by the ship with the advance notice. This ILTA comment, as well as the other ILTA comments discussed below, was supported by 23 other commenters. The ILTA requested that the notification include information on the characteristics of the residues and mixtures containing oil and the information required of a "generator" of "hazardous waste" under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*) and implementing regulations. Two other commenters requested a requirement for the ship to list and certify the contents of the residues and mixtures containing oil to be discharged. One commenter requested a requirement for information on content that might damage storage or treatment equipment. Numerous commenters expressed concern over the relationship of the proposed regulations with Federal and state waste management programs. These issues are considered together.

This rule imposes no hazardous waste regulations that are not already imposed by Federal, State, and local hazardous waste or occupational safety programs. EPA, state, and local regulations governing hazardous waste are independent of, and are not affected by, the Coast Guard's Certificate of Adequacy procedures or criteria. Those members of the regulated public who intend, or expect to handle hazardous wastes, should contact EPA, state, or local officials with any specific questions as to how hazardous waste regulations apply to them.

Numerous commenters expressed a concern over who would be considered a "generator" of any "hazardous waste". The ILTA expressed the opinion that the oceangoing ship would be "the generator of the waste as currently provided under the EPA regulations." The Coast Guard has no authority under the Act to reach these issues. The decision on the matter discussed in this and the prior paragraph has been delegated to the U.S. Environmental Protection Agency (EPA) under RCRA. The question of who may be a generator of hazardous waste, and thus subject to RCRA regulation, can only be answered by considering who falls within the definition of generator. EPA's regulations define "generator" as any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation (40 CFR 260.10). Under this definition, more than one person may be considered the "generator" of a hazardous waste because, although one person may produce the waste, others may first cause that waste to become subject to regulation. Questions as to which person or persons are considered "generators" in a particular situation should be referred to the appropriate EPA officials.

The Coast Guard randomly sampled oily bilge water and sludge to determine the amount of "hazardous waste" that might be involved. The random sample was not large enough to be statistically significant, but there was evidence that very little of this waste will be hazardous. No samples of oily bilge water were determined to be hazardous. Only one sludge sample out of seven was, by virtue of a 135 °F flashpoint, "ignitable" and therefore "hazardous" (40 CFR 261.21(a)(1)). The remaining sludge samples had flashpoints substantially higher.

The Coast Guard realizes that "hazardous waste" warrants consideration, but not in this rulemaking that is concerned with standards for determining the adequacy of reception facilities. A number of states have extended the coverage of their hazardous waste programs to include all oily waste. Additionally, there are Federal regulatory and legislative proposals that concern non-"hazardous" oily waste. Regardless of the amount of waste ultimately found to be hazardous, those persons managing such wastes must do so in accordance with EPA's RCRA regulations, and any applicable state or local regulations.

The ILTA proposal would require all ships to have EPA RCRA generator numbers, although they may never generate a hazardous waste or visit a port in a state requiring such a number for all oily waste. This would clearly extend the applicability of the EPA's regulations. The Coast Guard has no authority to do this, since it would require ships to obtain generator numbers in situations where the EPA's regulations do not.

Other comments requested that these regulations require oceangoing ships to provide additional information. The difficulty lies in the variety between oily waste programs in the different states. Once again, the Coast Guard has no authority to extend the effect of one state's regulations to ships visiting ports in another state. Although it is not possible for the Coast Guard to establish uniform Federal regulations in this area under its present authority, it would be appropriate to alert ship owners that various information requirements may apply to them, and that is why a note has been added to follow § 151.09(f). This note cautions the readers that various Federal, state, and local programs may affect their operations when meeting the Act and MARPOL 73/78.

Several commenters expressed concern over additional burdens placed on "imported" wastes. This is a matter for EPA interpretation. Whether a particular MARPOL waste is considered "imported" will depend on particular circumstances, and questions should be referred to appropriate EPA, state, or local officials.

One commenter noted that Annex I residues and mixtures containing oil might contain materials that would damage storage or treatment systems. The commenter recommended a requirement that oceangoing ships provide such information. This concern is valid, but the Coast Guard disagrees that a regulatory requirment would be in accordance with the Act. This is a commercial matter and, therefore, not one that Congress intended the Coast Guard to regulate. The Coast Guard can only certify that the port or terminal has adequate reception facilities available. In the absence of other direction from Congress, conditional contracts, governed by whatever state, Federal, local, or common law principles apply to the kind of transaction, would be the means available to the commenter.

Other commercial aspects of reception facility transactions were commented on extensively in response to the ANPRM and the NPRM. The reception facility operator provides a service to the ship similar to other services, such as bunkering, repair, provisioning etc., and may do so under similar terms. Such terms would include (but are not limited to):

a. A right to reasonable compensation for the service.

b. A right to reasonable assurance of payment.

c. A right to know the characteristics of the materials the reception facility will be receiving, not only to comply with regulatory requirements but also to protect personnel and equipment.

If an owner or operator of an oceangoing ship does not agree to reasonable commercial terms, a reception facility may refuse to take the ship's residues and mixtures containing oil without invalidating its Certificate. A reception facility operator that consistently demanded unreasonable terms would be hurt economically by

under-use of those facilities. A port or terminal that has reception facilities available only under prohibitive terms would be at an economic disadvantage compared to ports and terminals where the costs were more reasonable. The Coast Guard will rely on these market forces to keep the reception facility terms reasonable, but would seek appropriate regulatory authority from Congress for supervising the commercial aspects if the industry is unsuccessful in self regulation.

2. *Section 158.100*—One commenter suggested that this section excludes tank barges from the regulations and that the definition of "tank barge" be deleted from § 158.120 accordingly. The Coast Guard disagrees with this commenter because tank barges are included in the definition of oceangoing ship as defined by 33 CFR 151.05(j). In addition, the Act requires reception facilities to be adequate to receive residues and mixtures from ships, which is defined as "a vessel of any type whatsoever, including hydrofoils, air cushion vehicles, submersibles, floating craft whether self propelled or not, and fixed or floating platforms."

3. *Section 158.110*—a. Three commenters pointed out that they interpreted this section to require each terminal to receive oily bilge waste and sludge, and suggested this be clarified by adding a statement that every terminal would not be required to be prepared to receive oily residues. The Coast Guard disagrees, in that this section only concerns applicability and contains no requirements. In order to be granted a Certificate of Adequacy, a port or terminal would have to show availability or reception facilities meeting the appropriate criteria of Subpart B, including criteria for sludge and oily bilge water. Those ports or terminals who desire a Certificate of Adequacy without meeting a particular criteria may apply for a waiver under § 158.150.

b. Another commenter mentioned the lack of available facilities for handling the oily waste and suggested that, where port authorities exist, they be responsible for applying for certification. The Coast Guard disagrees with this comment. Survey results on the availability of reception facilities indicated that the need could be met in most ports by the existing fixed and mobile facilities. Also, terminals may join with others to apply as a port or choose to make their own arrangements to ensure that ships are provided reception facilities. The variety in the authority and responsibility of "port authorities" in the United States does not permit the Coast Guard to impose a uniform regulatory responsibility on these entities. The Coast Guard has no direct authority to require reception facilities, only to certify their adequacy.

c. The United States Department of the Interior (DOI) requested that oil rigs, both fixed and floating, be specifically addressed in these regulations. Fixed and floating drilling rigs and other platforms are included in the definition of "ship" contained § 151.05(q) of this subchapter and are not regulated under Part 158. A note has been added following the definition of "terminal" under § 158.120 to inform the reader.

d. One commenter requested exclusion of all cargoes and fuel loaded for the government, irrespective of government or non-government controlled tonnage, because of the commercial disadvantage involved with handling and dealing with government requirements. The Coast Guard disagrees with this comment. If Congress had intended to exclude government cargoes, it would have excluded them from the Act.

e. Two commenters suggested that dedicated private terminals be exempted from the regulations. They felt that their terminals were not open to just any shipper, and that a low frequency of use, less than five ships per week, justified an exemption from the regulations for their terminals. The Coast Guard has not identified a rationale under MARPOL 73/78 to justify such an exemption.

f. Six commenters requested that ports and terminals be exempted from the regulations when they are not used or intended to be used for the transfer of oil or oily mixtures. Power generating plants, chemical and ship repair facilities felt they are included in this category. These comments relate to the definition of "terminal", and are considered below with other comments concerning § 158.120.

g. One commenter requested clarification whether the 400 gross ton criteria would be calculated under the present U.S. system or the new international tonnage system (International Convention on Tonnage Measurement of Ships, 1969). Since these regulations implement MARPOL 73/78 reception facility requirements, IMO Resolution A. 541 (XIII), *Interim Scheme for Tonnage Measurement for certain Ships for the Purpose of MARPOL*, applies. Under this resolution, the owner of any U.S. vessel built before July 18, 1994 and measuring less than 400 gross tons as determined under a U.S. admeasurement system pre-existing the international system, has the option of using either the U.S. gross tonnage or the international gross tonnage.

4. *Section 158.120*—a. *"Daily average"*. A definition of the term "daily average" has been added to provide uniformity in the sections where the term "average" was proposed in the NPRM; §§ 158.140, 158.210, 158.220, and 158.230. A commenter requested clarification on what is meant by the term "annual data" proposed in § 158.220. To alleviate further confusion the concept of "annual data" has been incorporated into the definition of "daily average", and the term "annual data" has been removed from the regulations.

b. *"Harmful substance"*. One commenter requested that the definition of the term "harmful substance" be included in the regulations. The Coast Guard agrees and has added the definition from MARPOL 73/78, Article 2(2).

c. *"Oceangoing ship"*. Three commenters acknowledged that the proposed rule applies to "oceangoing ships" but requested clarification of the definition of that term in 33 CFR 151.05, as it applies to barges. Oceangoing barges are "oceangoing ships", but the need to make reception facilities available for them will depend on the configuration of particular barges. Section 158.110 has an exception for barges that do not carry oil in bulk and for tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route.

d. *"Oil" and oily mixture"*. Two comments were received which requested that the definition of oil and oily mixture as defined under MARPOL 73/78 be included in § 158.120. It was felt by the commenters that this would provide clarification that chemicals covered by Annex II, as well as both animal and vegetable oils are excluded from the 1,000 metrict ton calculations under § 158.220. Also, it was requested that the definition of oily mixture be expanded to include bilge slops, oily waste, oily residues (sludge), oily ballast water, and washing from cargo tanks, but exclude oil-like chemicals such as xylene, toluene, and cyclohexane. The Coast Guard has added the definition for "oil" as it appears in Annex I, Regulation 1 of MARPOL 73/78. This definition excludes chemicals regulated by Annex II of MARPOL 73/78: xylene, toluene, and cyclohexane are Category C substances under Annex II. The definition for "oily mixture", "a mixture with any oil content" (MARPOL 73/78, Annex I, Regulation 1), is incorporated by the Act but since it is self-

explanatory, it was not added to these regulations.

e. *"Person in charge"*. One commenter suggested that ports and terminals leased from Port Authorities should be exempted from the regulations, or that the regulations should designate the Port Authority as "person in charge" of the port or terminal. The Coast Guard disagrees with this comment. The Act makes no provision for an exemption of this kind. Whether or not the Port Authority would fit the definition of "person in charge" of a leased facility would depend on the nature of the lease agreement, and would vary from port to port.

Another commenter stated that the regulations were unclear as to who would be required to be designated as the "Person in Charge" of the port or terminal. The Coast Guard intent is to provide enough flexibility to allow the concerned parties to resolve this matter. It is envisioned that ports and terminals within a port would coordinate and make their own arrangements in designating a "person in charge." Of course, ports and terminals not in a group will be as free in their designations as those ports and terminals that are in a group. This designation, appointment, or assignment need only be made for the purpose of applying for and holding a Certificate of Adequacy, and may be independent of other responsibilities in the port. A reception facility operator could be designated, appointed, or assigned as a "person in charge" to simplify division of responsibilities concerning reception facilities and the ports and terminals.

One commenter recommended adding the term "reception facility operator" in order to distinguish division of both responsibility and liability between the reception facility operator and "person in charge" of the port or terminal. The Coast Guard has used the term "person who is in charge" of the reception facility, to differentiate from the "person in charge" of the port or terminal. The division of responsibilities is further discussed under § 158.163. For these reasons, there is no need to add a definition of "reception facility operator".

f. *"Port"*. One commenter suggested that paragraph (a) in the definition of port be changed by adding the words "that elects to be considered a port for the purposes of this part". The Coast Guard agrees with the commenter and has made the recommended change.

g. *"Reception facility"*. Two commenters requested that the definition of reception facility be revised to expand mobile facilities to include drums, portable containers, ISO containers, and any other container suitable for transport. The Coast Guard agrees with the comments and this definition has been changed to reflect its unrestrictive intent. To clarify that the reception facility need not be permanently installed at the port or terminal, the Coast Guard has added the words "be permanently or temporarily located in the port or terminal" to § 158.200(a).

One commenter requested that the definition of "reception facility" be revised by deleting the words chemical waste because neither MARPOL 73/78 nor the Act authorizes the regulation of chemicals other than those "noxious liquid substances" designated by Annex II of MARPOL. Since chemicals will be addressed under separate rulemaking, the definition was changed by eliminating the words "oil or chemical wastes" and adding the words "residues and mixtures containing oil" in their place.

h. *"Terminal"*. Four commenters felt that the note following the definition stating that a ship repair yard is a terminal, was inaccurate because the primary purpose of the ship repair yard is to repair ships, not to be used as a "port" or terminal for the transfer or other handling of a harmful substance as used in the definition of a terminal. It was suggested that a new definition be added for "ship repair yard" as meaning a facility whose primary business is that of building, converting, and repairing ships. The Coast Guard disagrees with this interpretation. This definition is not intended to imply that the primary purpose of a "terminal" need be "transfer or other handling of a harmful substance. A "facility" or "structure" is within the definition even if the transfer or other handling is incidental to its business, such as the removal of tank residues at a ship repair yard. The note stating that a ship repair yard is a terminal by definition is retained since incidental handling of residues and mixtures containing oil, a "harmful substance", occurs at all ship repair yards.

Four commenters including the ILTA felt that the words "harmful substance" in the definition of terminal should be replaced with "cargo or passengers" since the proposed rule relates to oceangoing ships in general, not only those which might be transporting a harmful substance. This rule applies to ports and terminals serving oceangoing ships that must comply with MARPOL 73/78 and not just those transporting harmful substances. While it might be possible to clarify this point by modifying the definition in the way the commenter suggests, the Coast Guard may not do so since the definition is in the Act (33 U.S.C. 1901(9)) and it requires an Act of Congress to change it.

One commenter suggested that they had difficulty distinguishing the difference between a terminal and port. The statutory definition of "terminal" provides some overlap in defining it as a "port or facility". Since the criteria for adequacy are based on the type and number of oceangoing ships using the port or terminal, and their trades, whether or not the facility or structure is a "port" or "terminal" is immaterial. The Coast Guard has changed the word "terminal" and inserted the word "port" in paragraph (c) of the definition of "port", for clarification.

5. *Section 158.130*—a. Section 158.130(a)(1)—One commenter questioned COTP authority to conduct an inspection stating that an inspection for compliance with MARPOL 73/78 is inappropriate since the convention requires that administrations assure that adequate facilities are available in accordance with broad guidelines. The Coast Guard disagrees that it has no authority to inspect since the Act specifically requires an inspection prior to issuance of a Certificate of Adequacy (33 U.S.C. 1905(c)). The inspection is part of the statutory program which will ensure that adequate reception facilities are provided, meeting the U.S. obligations under MARPOL 73/78.

b. *Section 158.130(a)(2)*—The same commenter further noted that the words "the requirements of" are redundant in paragraph (a)(2). The Coast Guard agrees with the commenter and the words have been deleted from paragraph (a)(2).

c. *Section 158.130(c)*—The same commenter also suggested inserting the words "the intent" after "violate" because both MARPOL 73/78 and the Act only give guidelines, not specific requirements. The Coast Guard agrees that the Act contains no specific requirements. However, MARPOL 73/78 contains the requirement that Administrations ensure the adequacy of reception facilities at their ports and terminals, and the COTP may not issue a waiver that violates that requirement. For these reasons, the Coast Guard has removed the words "the Act" but has not inserted the words "the intent of".

d. *Section 158.130(d)*—One commenter suggested that this paragraph may be interpreted to require a terminal to accept harmful substances even if it chooses not to do so. The Coast Guard does not agree. This is a delegation to the Captain of the Port (COTP), not a requirement. The COTP must have the power to designate ports where

necessary to fulfill the U.S. obligation to ensure the adequacy of reception facilities in U.S. ports and terminals. The Coast Guard expects that this will rarely be necessary, since reception facilities meeting the criteria of Subpart B, provided by terminals applying for a Certificate of Adequacy either individually or as a voluntary "port", will be adequate. If a group of terminals is designated as a "port" under this section, it will be up to the group rather than an individual terminal to provide reception facilities necessary for a Certificate of Adequacy.

e. *Section 158.130(e)*—One commenter recommended adding the words "of 400 gross tons or more" after the word "oceangoing" to be consistent with § 158.110. This section might be interpreted to permit the denial of entry to smaller oceangoing ships, even though the ports and terminals which receive only such smaller ships are not required to have Certificates of Adequacy for reception facilities. The Coast Guard agrees with the recommendation and has made the change to follow the words "oceangoing ship".

One commenter pointed out that nowhere is it defined what a "group of ports" means and why ships should be denied entry under § 158.130 to a group of ports presumably as one entity, if each port is required to have separate certificates. The Coast Guard agrees with the commenter. The term "group of ports" was left in this section in error, and has been removed.

7. *Section 158.140*–a. *Section 158.140(a)*—One company commented that, if there is a port authority, the port authority should be responsible for obtaining the Certificate of Adequacy for all terminals within the port that receive ships of more than 400 gross tons. In the absence of an existing port authority, individual terminals would either join together to obtain a Certificate of Adequacy or individually obtain it. The Coast Guard disagrees with this comment. This would place an undue burden on those entities called "port authorities" that do not have the authority, expertise, or resources to make the arrangements necessary to apply for a Certificate of Adequacy.

b. *Section 158.140(b)(3)*—Two commenters suggested that the requirement to ascertain the principal trade of ships created a burden on applicants for Certificates of Adequacy. The Coast Guard disagrees since applicants are only required to ascertain the general type of commodity handled (petroleum, chemical, or other), whether or not it is shipped in a tanker, barge, or dry cargo ship, and whether it is loaded or unloaded. Much of this information is readily available from a port or terminal's records, and is critical in determining whether or not the facility conforms to the criteria of Subpart B.

Two commenters recommended that a definite time period be included when applicants provide the number of ships using the port or terminal. The Coast Guard partially agrees with this comment. Establishing a particular 12-month period could result in an inaccurate figure for some ports and terminals. Additionally, it could be burdensome for ports and terminals using a different period for accounting and statistical purposes. For these reasons the Coast Guard has used the phrase "typical continuous 12-month period" in the definition of "daily average".

c. *Section 158.140(b)(4)(i)*—One commenter recommended that this section be modified so that an application for a Certificate of Adequacy contain the minimum volume of residues and mixtures that the port or terminal can receive each day, rather than total volume that the terminal can receive each day. They felt that this would eliminate the written notification requirement when ports and terminals using mobile facilities change the total volume of waste handled daily. The Coast Guard did not intend this interpretation of the proposed language, but agrees that it could be misconstrued as indicated by the commenter. However, the alternative recommended by the commenter would also be subject to misinterpretation. To clarify the intent of this paragraph, the Coast Guard has replaced the word "total" with the words "daily average" to comply with the commenter's recommendation. In order to be consistent with this change, § 158.140(b)(4)(iv) has text that parallels § 158.140(b)(4)(i).

d. *Section 158.140(b)(4)(ii)*—One commenter recommended changing the words "transfer rate" to "maximum allowable transfer rate". The Coast Guard agrees that the terminology proposed in the notice is confusing, but disagrees that the change suggested is appropriate. Defining a term such as "maximum allowable transfer rate" would be difficult in view of the variety of products to be handled and the variety of equipment used. Instead, this paragraph has been changed to require "a statement indicating whether or not the transfer rate under § 158.200 can be met". This resolves the issue raised by the commenter without raising new problems in interpretation.

e. *Section 158.140(b)(5)*—Five commenters mentioned that requiring terminal applicants to provide copies of each license, permit, and document pertaining to the storage, handling, transportation, processing and disposal of residues and mixtures containing oil would place a burden on the industry.

The ILTA and one other commenter suggested that nearly all ports and terminals that handle oceangoing ships have no licenses, permits, or documents for the storage, handling, processing, and disposal of residues and mixtures containing oil. An additional ILTA comment suggested that this section be deleted because questions about the treatment, transport, processing and disposal of wastes will be resolved by the parties concerned and those having the responsibility for enforcing or implementing the laws governing these activities. The Coast Guard concurs with the above comments and this requirement has been removed from the regulations.

A new subparagraph (5) has been added to this section that restates the inherent power of the COTP to request additional information that may be required to assess the adequacy of a port or terminal.

8. *Section 158.150.*—a. *Section 158.150(a)*—Two commenters addressed the lack of adequate facilities to handle oceangoing tankers and other oceangoing ships of 400 gross tons or more. Included in this concern was the lack of ocean mooring facilities and the need to construct new facilities to handle oil residue and oily mixtures. This would result in large capital expenditures even though the frequency of use would be low. In those cases, they felt waivers would have to be granted.

One commenter felt that Congress intended to exempt smaller ports from certification. The commenter viewed the proposed regulations as requiring small ports to obtain a Certificate of Adequacy and then a waiver. In both of these situations the commenters correctly note the incongruity of the Coast Guard granting a Certificate of Adequacy in situations where all criteria may be waived. This is necessary because of the U.S. obligation under MARPOL 73/78 to ensure that adequate reception facilities are available. In applying for a waiver, the port or terminal will account for how it takes care of, or will take care of, its ships' reception needs. This will assure the COTP that the waiver may be granted without undermining the intent of MARPOL 73/78. If this kind of port or terminal fell under a blanket exemption, there would be no way for the COTP to determine whether or not the ships using

it had adequate facilities elsewhere and the Coast Guard's obligation to ensure adequacy would not be fulfilled.

The ILTA raised a question about the preamble to the NPRM and the possibility that the proposed section allows a waiver based on reception facilities provided at locations other than the port or terminal applying for the certificate. Such a waiver would be allowed if the person in charge can show that it meets the requirements of the section. For example, it may be "impracticable" (§ 158.150(a)(2)(i)) to provide reception facilities at a small, remote port because compliance would jeopardize the economic viability of the port. However, to receive a waiver the person in charge must show that oceangoing ships using the port or terminal can use the proposed alternatives without undue delay and without hampering their ability to comply with the discharge requirements of MARPOL 73/78. The best evidence of this would be certified statements of this fact from the operators of oceangoing ships that use the port.

Likewise, it may be "unreasonable" (§ 158.150(a)(2)(i)) to provide oily ballast water reception facilities at a terminal that does not presently have such facilities, if the terminal has arrangements with another terminal nearby that has facilities with excess capacity. For this alternative reception facility to meet MARPOL 73/78, the person in charge should show that mobile facilities to transfer waste from one terminal to another are unavailable, or economically or physically impracticable, and the alternative arrangement will not result in undue delay to oceangoing tankers loading at each of the terminals, and will not hamper their ability to comply with the discharge requirements of MARPOL 73/78. The best evidence of this would be certified statements of these facts from the operators of the oceangoing tankers and the terminal having the alternative reception facilities.

These two examples do not represent the full range of situations where "alternatives meeting MARPOL 73/78" may be available to relieve the burden of "impracticable or unreasonable" reception facilities. Other evidence may be acceptable to the COTP to show that an alternative meets MARPOL 73/78. The Coast Guard has kept the regulatory requirements for a waiver simple to encourage maximum use of existing facilities as alternative reception facilities.

Seven commenters, including the ILTA, suggested that COTPs must be given specific guidelines for granting waiver. The Coast Guard agrees that such guidelines will help provide uniformity in application of this section. However, these guidelines are internal instructions which are excepted from notice and comment by 5 U.S.C. 553.

In order to clarify the intent of this paragraph, the Coast Guard has added the words "reasons why the requirement is unreasonable or impracticable" to § 158.150(a)(2)(i), and "that meet MARPOL 73/78" to § 158.150(a)(2)(ii).

9. *Section 158.163(a)*—a. The ILTA recommended that a paragraph (d) be added to clarify that ports or terminals are not required under this part to receive residues and mixtures containing oil from any ship not transferring cargo or passengers at that port or terminal. Another commenter recommended that this section be expanded to include the provision that "a port or terminal is not required to receive oil residue or mixtures for which the person in charge of the ship has failed to provide a written certificate as to the composition of the material to be discharged". The Coast Guard disagrees with the commenters. There is no provision in the law or regulations which can be interpreted to require each port or terminal to accept all oceangoing ships that choose to discharge waste in that port or terminal, or to accept wastes of unknown composition. Therefore, adding the provisions recommended is not necessary.

One commenter stated that the requirement for the person in charge holding a Certificate of Adequacy to ensure that the reception facility operates in compliance with the regulatory statutes is not possible to meet since proposed § 158.200(b) and § 158.200(c) (now § 158.200(a)(3)(ii) and § 158.200(a)(3)(iii)) are under the control of the ship. Another commenter suggested that a port authority choosing to submit an application on behalf of several terminals within the local geographical area would not be able, as the person in charge of the port, to ensure the proper operation of a reception facility. Because of this, they felt that the holder of a Certificate of Adequacy should not be required to guarantee the performance of the contractor over which he has no real control. The Coast Guard agrees that, depending on the circumstances, aspects of reception facility operation may be beyond the effective control of the holder of a Certificate of Adequacy, and it is desirable to bring enforcement measures to bear on those more directly responsible. To accomplish this, the phrase "who holds a Certificate of Adequacy" has been deleted from § 158.163 and the phrase "and each person who is in charge of a reception facility" has been added, thereby recognizing the responsibilities of the owner or operator of the port or terminal and those of the owner or operator of the reception facility. In each instance when enforcement action is contemplated, the party or parties most responsible for the violation will be determined. Additionally, lack of personal control over the incident will go to the mitigation of any action taken. The Coast Guard will accept further comment on this change, as indicated under **SUPPLEMENTARY INFORMATION.**

One commenter recommended adding the requirement for ships to have an operations manual and that port and terminal personnel be familiarized with the ship procedures for waste transfers. The Coast Guard feels that adding these requirements to this part would be redundant since oil transfer procedures and a familiarization requirement in the form of a pre-transfer conference prior to signing the Declaration of Inspection, among other requirements, are already required in 33 CFR Parts 154, 155, and 156. Additionally, Part 158 is restricted to the standards for adequacy and the issuance of a Certificate of Adequacy and does not address ships.

10. *Section 158.165*—a. *Section 158.165(c)*—Two commenters indicated that the information collected to meet the requirements of § 158.140 will be continually changing. They suggested that the requirement to notify the COTP of all changes in this information be modified to "major changes which would materially affect the operation of the reception facility". Another commenter felt that the written notification requirement should be increased from 10 to 30 days in order to allow sufficient time to meet this requirement. The Coast Guard must evaluate the changes which affect reception facility operations but appreciates the administrative burden imposed by a 10 day deadline for written notification. This section was changed to require this short notification only for a change of information required under § 158.140(b)(4), which is the information most directly related to reception facility operations.

b. *Section 158.165(d)*—One commenter requested the requirement to submit written notification of changes, that are not considered major, be increased from 30 to 60 days. The Coast Guard has determined that 30 days is an adequate period, since the amount of information required under paragraphs (b)(1), (b)(2), and (b)(3) of § 158.140 is not extensive and should not change very often. In order to fulfill U.S. responsibilities under MARPOL 73/78, the Coast Guard must

receive this information sooner than 60 days.

Two commenters felt very strongly that failure to notify the COTP of changes covered under paragraph (d) or paragraph (c) of § 158.165 did not warrant suspension and revocation proceedings and that a civil penalty provision was more appropriate. The Coast Guard agrees with the commenter that immediate suspension and revocation action may be an extreme first step. Along the same lines, another commenter suggested that civil penalty action be considered prior to invoking suspension and revocation proceedings. The Coast Guard agrees that the language in proposed paragraph (d) could be interpreted as limiting the COTP's discretion on enforcement options. Since this was not the intent of the proposal, proposed paragraph (d) has been changed by removing the references to revocation proceedings. The option remains to initiate suspension and revocation procedures for flagrant violators, in addition to initiating civil or criminal penalty action.

11. *Section 158.170*—a. *Section 158.170(a)*—One commenter asked that the Coast Guard consider negotiation or civil penalty prior to certificate revocation. The Coast Guard intended to apply this type of enforcement approach for reception facilities. The language of § 158.170 does not limit the COTP's discretion as to what enforcement mechanism to use, since the procedure only applies where suspension or revocation has been chosen. A new § 158.195 has been added, which duplicates the civil and criminal penalty provisions from the Act (33 U.S.C. 1908) to remind both Coast Guard personnel and the general public of this option. The COTP retains the inherent discretion to use less formal enforcement mechanisms such as negotiation and letters of warning where warranted.

Another commenter felt that this section provides for the possible immediate suspension of a Certificate of Adequacy when the COTP has evidence that a port or terminal has failed to submit a timely, written report of changes to information supplied under § 158.140. They suggested that this evidence should not permit immediate suspension but serve as a basis for notifying the port or terminal of the existence of such evidence. The port or terminal should then be allowed to reply to the notification or correct any deficiencies. A forty-five day grace period was recommended, after which the COTP should reevaluate the situation in light of the reply or corrective action taken. Only thereafter would suspension be appropriate. Two separate points need to be addressed. The Coast Guard intended the suspension and revocation procedures discussed in this section to apply to reception facility operations outlined in § 158.163, as well as the notification requirements for the person in charge discussed in § 158.165. Reference was erroneously made to § 158.165 in proposed § 158.170 and this was interpreted as limiting suspension and revocation action to § 158.165 notification requirements. Since § 158.163 concerns itself with the operation of the facility, a correction was made in § 158.170 to indicate this. The second point, concerning notification prior to suspension or revocation, is provided for in § 158.170(a). The provision for immediate suspension is retained so that the COTP can deal with serious situations, such as a port or terminal having a Certificate but no reception facilities. For less serious situations, the procedure in § 158.170(b) should result in at least a 30 day delay before any action is taken.

Another commenter requested clarification that the "undue delay" in proposed § 158.170(a) refers to delay due to reception facilities, rather than unrelated port or terminal operations. The Coast Guard does not agree that clarification is necessary. The reference to § 158.163 in the beginning of the paragraph establishes the connection to reception facility operations. The paragraph has been changed to clarify that the undue delay concerns oceangoing tankers or any other oceangoing ships of 400 gross tons or more.

b. *Section 158.170(b)*—One commenter expressed concern over the authority vested in the COTP to suspend or revoke the certificate and order any measures, without qualification, to correct the deficiencies noted. Two points need to be considered. The COTP is in fact limited by these regulations in requiring action to correct deficiencies. Only requirements prescribed in this part may be ordered by the COTP. Also, where the Certificate is revoked or suspended, the action may be appealed in accordance with § 158.190 (proposed as a second § 158.180, in error).

12. Section 158.180—Almost every commenter expressed concern about the need for a grace period after the regulations are published in order to provide time to comply with the regulations. The grace periods suggested by the commenters ranged from four months to two and one half years. Since the U.S. obligation to ensure the adequacy of reception facilities in U.S. ports and terminals was effective October 2, 1984, it would be contrary to the public interest to wait for 2½ years to put these regulations in effect. Based on all the information received, a 180 day time period between the publication date and effective date is considered reasonable time for ports and terminals to meet the requirements of this part.

Along the same lines, one commenter recommended that ports and terminals operating in compliance with MARPOL 73/78 be allowed to continue to operate without a Certificate of Adequacy where the certificate was not issued due to Coast Guard administrative delays. The Coast Guard concurs with this recommendation but the 180 day grace period should allow sufficient time for ports and terminals to comply with the requirements of this part, and for the COTP to issue Certificates. If, for any unforeseen circumstances, a port or terminal cannot meet the effective date, the COTP should be contacted to determine what arrangements can be made.

One commenter noted that one of the purposes of the reception facility regulations was to avoid delay of ships. The sanction of denial of entry punishes the very ships that the regulations intend to benefit. The basic scheme outlined by these sections is dictated by the Act (33 U.S.C. 1905) and the Coast Guard may not change it. The delay of a few ships by denial of entry will avoid the delay of many ships, over the long term, due to inadequate reception facilities.

One commenter suggested that a new paragraph be added which allows tankers and other ships of 400 gross tons or more to enter the port or terminal for repair or conversion work as deemed necessary by the owner, even if no Certificate of Adequacy has been issued. The Coast Guard feels that this change is unnecessary because scheduled repairs and conversions can be planned for in advance and this will provide ship repair facilities ample opportunity to make arrangements for handling the oil residue and oily mixtures generated on board the ship. If a vessel enters a port or terminal not having a Certificate in an emergency, the force majeure exception in § 158.180 could apply.

Two commenters, including the ILTA, recommended that a provision be included in the regulations which allow ships to enter a port or terminal not holding a valid Certificate of Adequacy if the ship elects not to discharge the waste. The clear language of the statute

requires that the Secretary deny entry to an oceangoing ship which is required by MARPOL 73/78 to retain on board while at sea, residues and mixtures containing oil, if the port or terminal is one required by MARPOL 73/78 or the regulations to have adequate reception facilities and the port or terminal does not have a valid Certificate of Adequacy.

13. Section 158.190—a. Section 158.190(a)—One commenter suggested that there may be many appeals unless the requirements of the proposed part are relaxed somewhat. The Coast Guard feels that the changes made to the proposal meet the requirements of the Act and the needs of the port, terminal, and ship owners and operators and, therefore, there should be fewer actions to appeal.

One commenter raised a question concerning which plaintiffs have "standing" to appeal action taken by the Coast Guard. They felt that "any person directly affected by the action" was not consistent with the Act (33 USC 1910(a)), and that plaintiffs must have an interest "which is or can be adversely affected". They recommended the regulations be modified to be consistent with the Act in order to avoid problems associated with "relaxed standing". The Coast Guard disagrees with the recommendation since § 1910 of the Act does not refer to administrative procedures allowed under § 1905. Additionally, the Coast Guard has used the language "directly affected" in other administrative appeal provisions (e.g. 33 CFR 157.06) and has not experienced difficulties associated with "relaxed standing".

b. Section 158.190(b)—One commenter suggested that the Act (33 U.S.C. 1905(c)) provides for appeal of the suspension and revocation action to the Secretary of Transportation and recommended that this section be revised accordingly. This change is not necessary because the Secretary, defined by the Act as "the Secretary of the department in which the Coast Guard is operating" (33 U.S.C. 1901(7)), has delegated to the Commandant of the Coast Guard the functions vested in the Secretary by the Act with certain exceptions and any reservations of authority (49 CFR 1.46(hh)). The Coast Guard does agree that an additional level of appeal is appropriate, and has changed the section to provide for a further appeal to the Chief, Office of Marine Environment and Systems. At this level of review the appeal can be resolved quickly and finally, and by someone in enough of a different administrative framework to provide an impartial consideration of the appeal.

14. Section 158.200—a. Section 158.200(a)(2) (Proposed § 158.200(d))—Four commenters requested that the requirement for holding each state, local, and Federal permit and license required by law and regulation be omitted. This provision was considered by the commenters to be beyond the scope of the Coast Guard's authority and interest. The Coast Guard agrees that the focus of this requirement should be narrowed, and has done this by adding the word "environmental" before the word "law", and by adding the phrase "concerning residues and mixtures containing oil" after the word "regulation". It is a valid criteria of adequacy since a reception facility that could not operate for lack of any permit or license would clearly be inadequate. One commenter noted that some reception facilities may not be required to hold any licenses or permits. These regulations do not require licenses and permits where they are not otherwise required by Federal, state, or local law.

Three commenters, including the ILTA, suggested that this section is unnecessarily vague since it gives no guidance to the COTP concerning acceptable alternatives, for a waiver under § 158.150(b)(2), to the apparent requirement that the terminal have permits for the treatment, storage, and disposal of wastes or that the terminal have a contract with a facility that does have such permits for ship wastes. The Coast Guard does not anticipate waiving this criteria, because it cannot waive requirements of laws.

Six commenters, including the ILTA, mentioned that the time it would take for a reception facility to receive residues and mixtures containing oil is substantially controlled by the design and operation of transfer systems on the ship. They objected to the wording of proposed paragraphs (b) and (c) of § 158.200, which appeared to place an absolute time requirement on reception facilities. The Coast Guard agrees with these commenters and has changed paragraphs (a) and (b) by inserting the words "be capable of" to indicate a standard of performance.

b. *Section 158.200(a)(3)(i) (Proposed § 158.200(a))*—Five commenters, including the ILTA, recommended changes to the 24 hour notification limit. Four recommended that it be increased to 48 hours, and one recommended a four week notification to conform to the notice requirements for hazardous waste from a foreign source, citing 40 CFR 264.12. This criteria is related to the 24 hour notice requirement proposed in § 151.09(f), and several comments to that section addressed identical concerns. The Coast Guard has rejected this recommendation for the same reasons given under paragraph 1.a of this preamble. The Coast Guard considers it unlikely that any "hazardous wastes" received under these regulations will be considered "imported". The discussion of this issue is in paragraph 1.c of this preamble.

c. *Section 158.200(a)(3)(ii) Proposed § 158.200(b))*—Two commenters claimed that the proposed less than 10 hour completion time for receiving ballast was too short. One of these proposed a 24 hour completion time. Another commenter recommended the Coast Guard specify a transfer rate, rather than a time criteria. Two commenters felt that it was inappropriate to set a time criteria, one because transfer time was under control of the ship and the other because the volume criteria were enough to ensure adequacy. One commenter recommended that time criteria be eliminated, and that the reception facility only need be capable of receiving the wastes while the oceangoing ship was at the pier. The Coast Guard has retained the less than 10 hour completion time for receiving ballast, which is within the range proposed by commenters to the ANPRM, since 24 hours would exceed the normal turn-around time of many oceangoing ships affected by these regulations. Specifying transfer rate is impractical because of the variety of oceangoing ships involved. Since this criteria is now qualified by the words "be capable of", variations in ships' transfer rates should not now affect the reception facility's ability to meet the criteria. It is necessary to retain a time criteria because the purpose of these regulations is to avoid undue delay to ships. Specifying only that the reception facility must be capable of completing the reception of the residues and mixtures containing oil while the oceangoing ship was at the dock would not ensure that other ships would not be delayed.

d. *Section 158.200(a)(3(iii) (Proposed § 158.200(c))*—Two commenters recommended that the proposed 4 hour completion time for receiving oily waste other than ballast be increased, one suggesting 8 hours and the other suggesting 10 hours. The Coast Guard has retained the proposed 4 hour completion time because many oceangoing ships, such as container ships and roll-on/roll-off ships, only remain at a pier for that period of time and allowing a longer time would result in undue delays to these ships. In those trades where this time criteria is impracticable and unnecessarily short, a waiver could be applied for under § 158.150.

e. *Section 158.200(b)*—Five commenters felt that the time criteria of paragraphs (a), (b), and (c) of proposed § 158.200 should not apply to ship repair yards. The commenters noted that ships stay at ship repair yards longer than other terminals, and the disposal of residues and mixtures containing oil is usually based on a contractual arrangement. Removal of residues and mixtures containing oil is usually coordinated with repair work to more efficiently use receiption capacity. The Coast Guard agrees with the commenters and has adopted the text suggested by a commenter, which requires the reception facility to be capable of completing reception of residues and mixtures containing oil before the oceangoing ship departs from the ship repair yard. This change relieves the burden on terminals without adding to the burden on oceangoing ships.

15. *Section 158.210*—a. *Section 158.210(a)*—One commenter stated that, in order to be consistent with MARPOL 73/78, the proposed requirement to handle 10 metric tons of sludge should only be for crude oil loading ports or terminals receiving ships with tanks for sludge generaged from on board processing of fuel and lubricating oil. Another commenter requested clarification of the proposal. The Coast Guard disagrees that this requirement should be changed. The sludge that is the subject of this requirement is produced oceangoing tankers propelled by diesel engines burning heavy fuel oil. Some steam propelled oceangoing tankers produce a smaller amount of this kind of sludge from lubricating oil. With the increase in proportion of diesel powered oceangoing tankers under U.S. flag, the Coast Guard expects that almost all crude oil loading terminals will serve ships in one of these categories. In the rare instance that a crude oil loading terminal serves only steam propelled oceangoing tankers not producing sludge, this fact may be documented in applying for a waiver of this paragraph under § 158.150.

One commenter suggested that this section be rewritten to exclude any slop oil containing chemicals, or tank washings and residues where chemicals or additives have been used in tank cleaning without prior approval of the reception facility. This issue was discussed under § 151.09(f), paragraph 1.c of this preamble. In order to receive a Certificate of Adequacy, a terminal need only have reception facilities for residues and mixtures containing oil. The reception facility would not be considered inadequate for refusing to accept materials containing chemicals that are not "oil" as defined in § 158.120, or if the oceangoing tanker refuses to supply reasonable information on the characteristics of the material to be discharged. Additionally, this particular paragraph addresses only capacity, and does not address the type of wastes received.

b. *Section 158.210(b) (proposed §§ 158.210(b) and 158.210(c))*—Proposed §§ 158.210(b) and 158.210(c) have been combined to simplify and clarify the regulations.

One commenter recommended that the words "use", "using", and "uses to" be replaced with the words "load from", "loading from", and "loads from". The Coast Guard agrees that this change would clarify some provisions relating to capacities, and has made changes accordingly, however it is inappropriate to change paragraph (b) because it, along with paragraph (a), applies to all oceangoing ships using the terminal, whether they load or not.

One commenter requested that the oily bilge water criteria be combined with the ballast criteria since oceangoing tankers are likely to combine these wastes and handle them together. This comment was also made to the proposed requirements in § 158.220(b) concerning oil, except crude oil, loading ports. The Coast Guard has retained separate categories for different kinds of residues and mixtures containing oil for clarity. There is nothing to prohibit a port or terminal from using the same reception facility for all categories providing it meets the cumulative total of the applicable criteria.

One commenter questioned whether the proposed criteria of 2 metric tons (2.2. short tons) is consistent with MARPOL 73/78 Annex I. They felt that this requirement is too specific in regard to capacities required. This comment was also made for the proposed capacity requirements in §§ 158.220(c), 158.230(c), and 158.230(d). The Coast Guard disagrees with this comment. The Act requires the Coast Guard to establish criteria for determining adequacy (33 U.S.C. 1905(a)) and the Coast Guard had to be specific in the criteria for capacity.

c. *Section 158.210(c) (proposed § 158.210(d))*—One commenter felt that only ships with ballast needs should be included in the calculations and requested that crude oil tankers having ballast voyages of greater than 72 hours or 1200 nautical miles be exempted from the calculations of ballast handling requirements. The Coast Guard disagrees with this comment. As stated in the ANPRM, most crude oil loading terminals serve at least some ships completing a short ballast voyage (48 FR 12397). Additionally, factors such as rough weather encountered by oceangoing tankers en route to crude oil loading terminals will frequently prevent the oceangoing tankers from achieving a clean ballast condition, even on voyages of greater than 72 hours or 1,200 nautical miles. This is consistent with the intent of MARPOL 73/78, since there was no intention to exempt ports and terminals handling oceangoing tankers on voyages of over 72 hours or 1,200 nautical miles from meeting the ballast reception needs of such tankers when they have not achieved a clean ballast condition. (See Regulation 12(3)(a) of MARPOL 73/78.) This can be compared with Regulation 12(2)(b) of MARPOL 73/78, concerning ports and terminals loading oil other than crude oil, where the criteria of greater than 1,000 metric tons per day was specifically intended to exempt ports and terminals loading a smaller amount of oil from having to provide reception facilities for the oceangoing tankers they handle. It will be easier for both terminal operators and COTPs to document the actual needs of oceangoing tankers using particular crude oil loading terminals than the length of their voyages. Even if this were to be considered an expansion of the MARPOL 73/78 criteria, this expansion would be permissible under the Act since the rules would meet the mandate to "prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol" (see 33 U.S.C. 1903(b)).

Two commenters proposed that the capacity requirements for handling oily ballast be decreased from 30% to 15% of the deadweight tonnage. One commenter suggested that the large volumes necessary to meet the 30% deadweight tonnage capacity requirement might overload most refinery waste treatment capabilities. Still another requested the 30% figure be lowered to 20%. Two other commenters suggested that the 30% requirement is excessive. The Coast Guard recognizes that actual requirements may vary substantially between different geographic locations and different trades, but must retain the 30% figure for several reasons. The 30% guideline suggested in the IMO's "Guidelines on the Provision of Adequate Reception Facilities in Ports" (IMO Guidelines) was arrived at through careful deliberation and must be given substantial weight for this criteria. The 30% figure has been used for the

reception facility criteria of the Coast Guard's regulations for exemption from 33 CFR 157.10a (33 CFR 157.304) and has proved to be practical in that context. Additionally, the COTP would not have the discretion to require a larger percentage than specified in the criteria should the circumstances demand. For these reasons, the Coast Guard retains the 30% criteria while recognizing that the COTP must remain open to waivers if the applicant or holder can prove that the requirement is unreasonable or impracticable.

Two commenters requested that oceangoing tankers be excluded from the capacity calculations when they are equipped with segregated ballast (SBT), crude oil washing (COW), or dedicated clean ballast tanks (CBT). Along the same lines, credit in the calculations was requested for back load cargoes. The intent of the proposed regulations was to exclude SBT and CBT, and the text of this section has been changed accordingly. The Coast Guard agrees that oceangoing tankers equipped with COW should also be excluded from the capacity calculations, and has changed the wording of this section to reflect this and relieve this burden. The Coast Guard does not agree that credit in the calculations should be allowed in this section for back load cargoes. The effect of back load cargoes in reducing or eliminating the need for ballast reception facilities will vary substantially from terminal to terminal and must be considered on an individual basis for a waiver by the COTP.

One commenter suggested that this section was unclear. The commenter requested that this section clearly indicate that it concerns only the loading of crude oil into oceangoing tankers. The Coast Guard agrees with the commenter and has changed this section accordingly.

Two commenters suggested that the capacity requirements should be calculated using an average of the deadweight tonnage of the oceangoing tankers serviced by the port or terminal. The Coast Guard disagrees with these comments, because this would be contrary to the intent of MARPOL 73/78 in that it would lead to the Coast Guard certifying as adequate reception facilities that would not have sufficient capacity for many of the oceangoing tankers loading at the port or terminal.

16. *Section 158.220*—a. *General*—Six commenters recommended that the word "transferring" be replaced by the word "loading". The Coast Guard concurs with this recommendation since ports and terminals receiving product oil would be under proposed § 158.230. The words "transfer" and "transferring" were replaced with "load" and "loading", as applicable.

One commenter requested clarification of this section to show that the regulations do not apply to terminals that load exclusively to tank barges that do not ballast or wash cargo tanks while proceeding en route. The Coast Guard agrees with this comment as a matter of policy, since this kind of tank barge would not have any reception needs related to MARPOL 73/78. However, the exclusion was placed in § 158.110. One commenter recommended that the words "have the capacity to" be , inserted in the exception for tank barges between "do not" and "ballast". The Coast Guard agrees with the intent of this comment, but has elected to use the following: "tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route".

One commenter requested that bunker fuel be excluded from the 1,000 metric ton per day loading criteria. The Coast Guard agrees with the commenter and the words "or bunker oil" have been added after the words "crude oil" in this section to relieve this burden. A definition of "bunker oil" has been added to § 158.120 to clarify that only "oil loaded into bunker tanks for use as fuel" is under the exception, but bunker oil carried as cargo is not.

Another comment indicated that during heavy traffic periods the required reception facility may be inadequate to meet demand and that provisions need to be incorporated into the regulations which allow for this. The Coast Guard considered this issue in deciding how the average tonnage should be calculated, realizing that many product trades are cyclical in nature. Calculating on the basis of heavy traffic periods would assure that reception facility capacity would almost never be exceeded, but the chronic under-use of such capacity would create a burdensome expense for ports and terminals. The Coast Guard has determined that using a daily average, based on a typical continuous twelve month period, which would reasonably represent the activity at the port or terminal, achieves a fair balance of these factors and is consistent with the intent of MARPOL 73/78 and the Act, and has not so defined the term "daily average".

b. *Section 158.220(c) (Proposed § 158.220(d))*—Three commenters stated that they felt the requirement for reception facilities "to have capacity for receiving a total amount of oily ballast equal to 30% of the deadweight tonnage of the largest tanker using the port" is excessive. Figures were proposed ranging from 10% to 20% in place of the 30% requirement. The Coast Guard has retained the 30% criteria for the reasons given under § 158.210(c), paragraph 15.c of this preamble.

Two commenters suggested that the words "not having SBT or CBT" be added after ". . . multiplied by the average number of tankers. . . ." in the proposal. The Coast Guard agrees with the intent of this comment, and has constructed paragraph (c) to contain this qualification. This comment also applies to § 158.210(c), and resulted in the same construction of the paragraph.

Two commenters recommended that the word "uses" be replaced with "loads at" to indicate that only ships loading at the port or terminal need be included in this calculation. The Coast Guard agrees with the comment and has changed "using" to "loading from" in this section.

One commenter recommended that the word "capable" be inserted before the words "deadweight tonnage" and that "average" be inserted before the words "tanker that uses". The Coast Guard does not agree with this comment, since calculating for an average of oceangoing tankers in this case would result in a reception facility that is inadequate for an unacceptable number of larger-than-average oceangoing tankers.

c. *Section 158.220(d) (Proposed § 158.220(e))*—One commenter recommended that provisions be included which exclude oceangoing tankers equipped with SBT and CBT from the total cargo residue capacity calculations. The Coast Guard does not agree with this comment because oceangoing tankers with SBT or CBT clean cargo tanks and therefore require reception facilities for cargo residues. Another commenter supported the Coast Guard's point of view.

Another commenter recommended the capacity requirements be calculated by taking a percentage of the deadweight tonnage of the largest oceangoing tanker that loads at the port or terminal and multiplying by the average number of such tankers loading at the port or terminal each day, allowing this multiplier to be a fraction less than one. Allowing a fractional average less than one would be contrary to the intent of MARPOL 73/78, as it would result in a Certificate of Adequacy being issued to a port or terminal that did not have reception facilities with sufficient capacity for many of the oceangoing tankers loading at the port or terminal. The Coast Guard has clarified this intent by providing that the deadweight tonnage of the largest oceangoing tanker is multiplied by the daily average of oceangoing tankers only when this

would result in a greater required capacity. This change has also been made to §§ 158.210(c) and 158.220(c), for the same reasons.

A second commenter suggested that this section be omitted or transferred to § 158.240 since cargo residue is only removed when the oceangoing tanker is cleaned in a repair yard. The Coast Guard does not agree with this comment, since tank cleaning, either for a change of product or to maintain product purity, is common in the product trade.

17. *Section 158.230*—a. *General*—One commenter suggested that ports served strictly by barges should be exempted from these requirements because barges do not accumulate the residues and mixtures containing oil that other oceangoing ships do. The Coast Guard agrees with this comment. Those tank barges that do accumulate residues and mixture containing oil only do so through cargo operations and are thus covered under § 158.210 and § 158.220. This section has been modified by adding the words "and those that are used exclusively by tank barges" to the exception. Another commenter recommended that provisions be included to exempt tank barges that do not ballast or wash cargo tanks while proceeding en route. The Coast Guard agrees with this concept but prefers to use the language "tank barges that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route", for the reasons given under § 158.220, paragraph 16.a of this preamble. This change has been made to § 158.110.

In order to clarify and simplify the regulations, proposed § 158.230(b) has been combined with § 158.230(a), and proposed §§ 158.230(c) and 158.230(d) have been combined to form § 158.230(b).

b. *Section 158.230(a) (Proposed §§ 158.230(a) and 158.230(b))*—One commenter requested that provisions be included in the regulations which limit the capacity requirements to apply only to terminals which handle ships with tanks for sludge generated from the on board processing of fuel oil and lubricating oil, to be consistent with MARPOL 73/78. This issue was considered under § 158.210(a), paragraph 15.a of this preamble. The reasons for retaining these paragraphs as written are even more forceful for this class of ports and terminals. The majority of oceangoing shipping to and from U.S. ports and terminals is foreign flag. The overwhelming majority of foreign flag oceangoing ships are propelled by diesel engines burning heavy fuel oil. The Coast Guard considers that very few ports and terminals will be served exclusively by oceangoing diesel ships burning lighter fuel oil or oceangoing steamships not accumulating this kind of sludge. In the rare instances when this does happen, the person in charge of the port or terminal can document this fact in applying for a waiver under § 158.150.

18. *Section 158.240*—a. *Section 158.240(c) (Proposed § 158.240(a))*—Seven commenters stated that the criteria for tanker ballast in proposed § 158.240(a) was excessive. Four commenters recommended that volume be left to the contractual relationship between the oceangoing ship and the ship repair yard. One commenter noted a heavy burden placed on smaller ship repair yards by this criteria. Two commenters noted that a capacity of 10,000 barrels had been adequate in the past to cover all contingencies, and one of these noted that this corresponded to 4½% of the deadweight tonnage of the oceangoing tanker considered in the comment. The Coast Guard agrees that the proposed criteria was excessive, but leaving the volume to be settled as a matter of contract would be inconsistent with the intent of the Act. The Coast Guard has combined the ballast criteria (proposed § 158.240(a)) with the wash water criteria (proposed § 158.240(d)) to form a combined criteria of the lesser of 1,500 metric tons (approximately 10,000 barrels) or 4½% of the deadweight tonnage of the largest oceangoing tanker serviced. This represents a reduction from proposed criteria to a level considered reasonable by commenters.

b. *Section 158.240(d) (Proposed § 158.240(e))*—One commenter requested definitions for "black product" and "white product" as used in the proposed paragraph. The Coast Guard will accept the common industry usage of these terms, so there is no need for special definitions for the purposes of these regulations.

19. *Section 158.250*—*a. Section 158.250(a)*—One commenter stated that the standard discharge connection would be too small to transfer residues and mixtures containing oil within the time criteria of § 158.200. The commenter erroneously concluded that this connection would be used for all residues and mixtures containing oil, including such high volume materials as oily ballast. The connection is only intended for oily bilge water. Using the flow rates provided by the commenter, the connection would be sufficient to transfer between 35 and 58 metric tons per hour. Since most reception facilities will only be required to take 10 to 20 metric tons of oily bilge water within 4 hours to meet the criteria of adequacy, the size of the connection has not been changed.

b. *Section 158.250(b)*—One commenter recommended this paragraph state that hoses and pipes should be compatible with a connection that meets the 33 CFR 155.430 criteria. The Coast Guard considers that the term "attaches to" covers the aspect of compatibility more clearly than the language proposed. Another commenter suggested that the reception facility would be in violation of this criteria if it could not match any and all waste discharge fittings of the oceangoing ship. The commenter has misinterpreted this section. In order to be certified as being adequate, the reception facility must have a connection meeting the same specification that is required for all oceangoing ships of 400 gross tons or more equipped with sludge tanks. Nothing in this section prohibits the reception facility from removing oily bilge water with other fittings or connections if they should prove more convenient than the standard discharge connection.

Summary of Analysis

The costs, benefits, and other impacts of Federal regulation of reception facilities are best viewed in context with the entire MARPOL 73/78 Annex I scheme. When fully implemented, Annex I is expected to reduce the discharge of oil from ships into the sea from the pre-MARPOL 13.41 million barrels (562.8 million gallons) per year to approximately .93 million barrels (39.06 million gallons) per year. Of the 12.48 million barrels (523.74 million gallons) reduction per year worldwide, 25% is attributable to trade in and around U.S. waters for a total of 3.12 million barrels (131.04 million gallons) per year. (The NPRM stated the reduction as being from 280 million gallons per year total to 50 million gallons, and did not allocate a portion of this reduction to trade in and around U.S. waters. The figures were revised upwards to conform with the International Maritime Organization study, *Petroleum in the Marine Environment*.) Counting the value of the oil, and the saved cost of damaged wildlife and of clean-up, this oil is valued at $161.70 per barrel. The total annual benefit will be $504.5 million for oil not discharged in and around U.S. waters. While the costs of various aspects of the Annex I scheme can be attributed to the various implementing regulatory programs with reasonable accuracy, it is virtually impossible to apportion the benefit of reduction of discharge. The principal aspects of the Annex I scheme are as follows:

a. *Ship Equipment and Operational Requirements* (MARPOL 73/78, Annex I, Regulations 13 through 26; 33 CFR Parts 155 and 157). This aspect includes equipment and procedures to minimize the need for discharging oily wastes at sea and to minimize accidental discharges during casualties such as collisions and groundings.

b. *Ship Discharge Limits* (MARPOL 73/78, Annex I, Regulations 9 and 10; 33 CFR Parts 151 and 157). This aspect includes the limits placed on the amount of oily wastes ships can discharge at sea, and the circumstances in which allowable wastes may be discharged.

c. *Reception Facilities* (MARPOL 73/78, Annex I, Regulation 12; 33 CFR Part 158). This aspect includes regulations to minimize the impact of the discharge limits on ships. The intent is to avoid the expense of delay from ships having to arrange for reception facilities on a case-by-case basis, and to avoid ships being placed in the position of having to contravene discharge requirements because of lack of reception facilities.

The analysis below only considers the costs attributable to reception facility regulations, and the benefits directly attributable to this progam. However, some portion of the overall $504,520,170 MARPOL benefit is attributable to reception facilities and will serve to further balance the costs.

Final Regulatory Evaluation

For the NPRM these regulations were considered non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. The Coast Guard has reevaluated these regulations under Executive Order 12498, and they are now considered significant because of the unusual public interest and the unusual interest to other Federal agencies, particularly the EPA. A final regulatory evalution has been prepared and placed in the rulemaking docket and may be inspected or copied as detailed under ADDRESSES above. Copies may also be obtained from LT Davison as detailed under "FOR FURTHER INFORMATION CONTACT" above.

The final evaluation projects costs to the Federal Government and the private sector. These costs include administrative costs associated with the preparation and processing of a Certificate of Adequacy, and the costs of providing reception facilities where they are not presently available. The Coast Guard assumes that two oil loading ports and terminals, one private and one Federal Government, will have to install ballast reception facilities. The Coast Guard further assumes that ten ports will have to purchase and operate tank trucks to serve as mobile reception facilities for oily bilge waste and sludge. Cost information was solicited from commenters on the ANPRM and from independent waste haulers. Based on multiple cost estimates that were received, the high estimate of a total annual cost is $8.9 million. Using averages of cost estimates would result in a total annual cost of $6.2 million. Most of the increase in cost over those estimated in the NPRM, $7.8 million and $5.4 million, is due to the use of revised figures for total number of terminals affected (from 1,348 to 2,403), resulting in increased costs to both the public and the Coast Guard. This revision has resulted from a more detailed analysis of the Maritime Administration figures in conjunction with development of the Port and Environmental Safety Operating Program Plan. Part of the increase is due to revised estimates of the cost to the Coast Guard for enforcement, and the remainder due to inflation. All figures are in 1985 dollars.

Economic benefits could not be accurately quantified; environmental benefits are discussed below. The primary economic benefit will be in the avoidance of delay of oceangoing ships. The Coast Guard projects that an average of 10,938 oceangoing ships will use reception facilities annually. Based on an unweighted average of the demurrage rates provided by one commenter, each average hour of delay for reception facilities results in an overall cost of $8.1 million in ship operating expenses annually. (The $7.5 million figure in the NPRM has been adjusted for inflation.) While the Coast Guard cannot at this time estimate how many hours, on the average, will be saved by Federal regulation of reception facilites, the costs and benefits will balance if an average of 1.09 hours were saved per ship using reception facilities, without counting the overall MARPOL 73/78 benefit attributable to reception facilities. The increase in the 1.09 hour figure from the 1.04 figure noted in the NPRM is due to the increase in estimated costs, while the estimated benefits remained the same except for inflation. This cost/benefit ratio does not take into account the overall MARPOL 73/78 benefit of $504.5 million, some portion of which is attributable to these regulations as noted under "Summary of Analysis".

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, a regulatory flexibility analysis which discusses the impact of the proposal on small entities has been made part of the Final Regulatory Evaluation.

In light of comments to the ANPRM, the Coast Guard, in the NPRM (49 FR 25201), proposed using the Small Business Administration's (SBA) definition of "small business" for SBA loans for concerns engaging in transportation and warehousing (13 CFR 121.3–10(f)). Under this definition, a concern is considered small if its annual receipts do not exceed $1.5 million. Since there were no comments challenging this criteria, the Coast Guard has adopted it.

The Coast Guard does not have any information that will indicate how many of the estimated 2,403 terminals or ports affected by the proposed regulations will be considered small entities under the SBA definition. Some small ports and terminals are affiliated with large corporations having a substantial monetary interest in the cargo while others are independent contractors for wharfage and warehousing. For this reason the analysis was limited to expected impact on an individual small port or terminal. For purposes of meeting the Regulatory Flexibility Act, the Coast Guard assumes that a "substantial" number of small entities will be affected.

The Coast Guard expects that many small entities will either use existing mobile reception facilities or will be able to use reception facilities located elsewhere with a waiver under § 158.150. Costs to small entities will consist of the administrative costs of application for a Certificate of Adequacy. In many cases these costs will be substantially reduced, since many small entities will combine their efforts and apply as a port. The cost of this one-time effort is expected to be $843.00 per small entity, and is not considered to be significant. (The increase from the figure of $780.00 in the NPRM results from inflation in updating to 1985 dollars.)

Paperwork Reduction Act

This rulemaking contains information collection requirements in the following rules: Sections 151.09, 158.140, 158.150, 158.165, and 158.190. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Section 151.09 has been assigned RCS/OMB number 2115–0544, and §§ 158.140, 158.150, 158.165 and 158.190 have been assigned RCS/OMB number 2115–0543. Due to changes in analysis discussed above, primarily in the number of terminals estimated to be covered by the

regulations, the Coast Guard has requested a change to RCS/OMB number 2115–0543. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES".

The Coast Guard is developing a form which will combine the Certificate of Adequacy, the application required under § 158.140, and work sheets for determining adequacy of reception facilities. The intent of this form is to reduce the paperwork burden on both the public and the Coast Guard. The applicant would fill out the application and the work sheets, and the COTP would fill in and issue the Certificate of Adequacy. The Coast Guard is considering mandating the use of the application part of this form, in which case an NPRM will be published proposing a change to § 158.140 and allowing the public an opportunity to comment. The form will remain optional until such a change is made final. Until that time the form will be available from the COTP, but applicants may satisfy the requirements of § 158.140 in any format they choose as long as they supply the required information.

The form is appended as an Appendix A to this rulemaking, and the public is invited to submit their comments to the Coast Guard as indicated under "ADDRESSES".

Environmental Impact

As noted under Summary of Analysis, other laws and regulations restrict the amount of waste that can be discharged into the ocean, and require that wastes not legally discharged be retained for disposal ashore. Implementation of MARPOL 73/78 Regulation 12 formalizes the indirect requirement that shore reception facilities be provided in order for ships to comply with the discharge restrictions. The regulations will not change the demand for reception facilities because they will neither reduce the generation of oily waste nor further restrict discharges to the ocean. They will not affect the type of volume of oily waste coming ashore for processing and disposal.

The regulations will affect the locations where these wastes come ashore since, under the status quo, ports might not make reception facilities available just because of a market demand. Without the regulations ship wastes would be concentrated at ports where reception facilities are already available and at those where they will be provided in response to market demand. As to the environmental significance of this effect, one commenter to the ANPRM indicated that industrialized areas are already overloaded with waste disposal problems, while several others thought that the industrialized ports will be better equipped to handle wastes than remote ports. The Coast Guard estimates that approximately 400,000 metric tons of oily wastes might be dispersed to local reception facilities under these regulations. However, the Coast Guard considers that this dispersal will be environmentally neutral since oily wastes can be readily transported, and disposed of or recycled.

As noted under Summary of Analysis, above, the proposed reception facility regulations are part of the overall MARPOL 73/78 scheme which is expected to result in a net reduction of 3.12 million barrels (131.4 million gallons) per year of oily wastes discharged in and around U.S. waters. As further noted under Summary of Analysis, this estimate represents the part attributed to U.S. trade of a worldwide reduction from 13.41 million barrels (562.8 million gallons) per year to approximately .93 million barrels (39.06 million gallons) per year. The NPRM stated the reduction as being from 280 million gallons per year total to 50 million gallons, and did not allocate a portion of this reduction to trade in and around U.S. waters. The figures were revised upwards to conform with the International Maritime Organization study, *Petroleum in the Marine Environment*. While it is impractical to accurately apportion the amount of this reduction attributable to reception facility regulation, the Coast Guard considers that this environmental benefit more than compensates for any negative environmental impact that might be attributed to this regulatory program.

An environmental assessment and a finding of no significant impact have been prepared and are available as detailed under "ADDRESSES" above.

BILLING CODE 4910-14-M

Appendix A.—Certificate of Adequacy and Optional Application Form

U.S. Department of Transportation
U.S. Coast Guard
CG-5401 (7-85)

CERTIFICATE OF ADEQUACY
FOR
RECEPTION FACILITIES

THIS CERTIFIES THAT _____
(TERMINAL/PORT)
HAS FACILITIES ADEQUATE TO RECEIVE RESIDUES AND MIXTURES CONTAINING
_____
_____
_____
(OIL OR CHEMICAL OR GROUP OF CHEMICALS)

FROM OCEANGOING SHIPS, AS REQUIRED BY THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL OF 1978 RELATING THERETO (MARPOL 73/78), THE ACT TO PREVENT POLLUTION FROM SHIPS, AND ASSOCIATED U.S. REGULATIONS IN 33 CFR 158.

THIS CERTIFICATE IS ISSUED PURSUANT TO AN APPLICATION DATED _____, A COPY OF WHICH IS ATTACHED TO, AND IS A PART OF, THIS CERTIFICATE. EACH TERMINAL LISTED IN THE APPLICATION SHALL MAINTAIN A COPY OF THIS CERTIFICATE AVAILABLE FOR INSPECTION BY COAST GUARD PERSONNEL AND THE MASTER, PERSON IN CHARGE OR AGENT OF ANY SHIP, USING OR INTENDING TO USE, THE TERMINAL.

TERMINALS AND PORTS REQUIRED TO HAVE AN OPERATIONS MANUAL FOR OIL TRANSFERS DESCRIBED IN 33 CFR 154.300 SHALL ATTACH A COPY OF THIS CERTIFICATE, INCLUDING ANY WAIVERS, TO THAT OPERATIONS MANUAL.

THE TERMINAL/PORT PERSON IN CHARGE IDENTIFIED IN THE ATTACHED APPLICATION SHALL NOTIFY THE U.S. COAST GUARD CAPTAIN OF THE PORT (COTP) IN WRITING WITHIN 10 DAYS AFTER ANY OF THE RECEPTION FACILITY INFORMATION SUPPLIED UNDER 33 CFR 158.140(b)(4) CHANGES. THE TERMINAL/PORT PERSON IN CHARGE SHALL NOTIFY THE U.S. COAST GUARD COTP IN WRITING WITHIN 30 DAYS AFTER ANY OF THE TERMINAL/PORT INFORMATION SUPPLIED UNDER 33 CFR 158.140(b)(1)-(3) CHANGES.

THE TERMINAL/PORT OWNER, OPERATOR, OR PERSON IN CHARGE SHALL ENSURE THAT THE RECEPTION FACILITY DOES NOT OPERATE IN A MANNER THAT VIOLATES ANY REQUIREMENT OF 33 USC 1901-1911 OR REGULATIONS IN 33 CFR 158 OR BE LIABLE FOR CIVIL PENALTIES OF UP TO $25,000.

THIS CERTIFICATE IS VALID UNLESS SUSPENDED OR REVOKED AT WHICH TIME IT SHALL BE PROMPTLY RETURNED TO THE U.S. COAST GUARD COTP.

SIGNATURE OF CAPTAIN OF THE PORT _____

TYPED NAME OF CAPTAIN OF THE PORT _____

COTP ZONE _____ DATE _____

PHONE ( ) _____

THE FOLLOWING WAIVERS TO THIS CERTIFICATE OF ADEQUACY ARE GRANTED. THESE WAIVERS SHALL BE ATTACHED TO AND ARE A PART OF THIS CERTIFICATE.

WAIVER DESCRIPTION	DATE

INSPECTION ENDORSEMENT

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
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INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

INSPECTOR'S SIGNATURE _____
INSPECTOR'S NAME _____
RECEPTION FACILITY LOCATION _____
DATE _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5401A (8-85)

APPLICATION FOR CERTIFICATE OF ADEQUACY
FOR
RECEPTION FACILITIES

1. General. The United States as a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) is required by Annex I and the Act (33 USC 1901) to issue certificates to reception facilities verifying their adequacy to receive oily waste from ships. Regulations implementing the United States waste reception facility program are in 33 CFR 158.

2. The Certificate of Adequacy remains valid until suspended or revoked.

3. Upon suspension or revocation a Certificate of Adequacy shall be promptly returned to the issuing U.S. Coast Guard Captain of the Port (COTP).

4. The Application, as submitted, shall be permanently attached to and become a part of the Certificate of Adequacy upon issuance.

5. A copy of the Certificate of Adequacy with the Application attached shall be available at each port and terminal to which it applies and shall be available for inspection by Coast Guard personnel and the master, person in charge or agent of a oceangoing ship using or intending to use the reception facility.

6. A copy of the Certificate of Adequacy shall be attached to the operations manual for marine oil transfer facilities described in 33 CFR 154.300.

7. The terminal/port person in charge identified in the Application shall notify the U.S. Coast Guard Captain of the Port (COTP) in writing within 10 days after any of the reception facility information supplied under 33 CFR 158.140(b)(4) changes. The terminal/port person in charge shall notify the U.S. Coast Guard COTP in writing within 30 days after any of the terminal/port information supplied under 33 CFR 158.140(b)(1)-(3) changes.

8. Civil Penalties. A person who after notice and an opportunity for a hearing, is found:

   a. to have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

   b. to have violated the Act to Prevent Pollution from Ships, or the regulations issued thereunder, shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

INSTRUCTIONS FOR COMPLETING
THE CERTIFICATE OF ADEQUACY (COA) APPLICATION

The following instructions for individual line items are provided to assist in completing the Application for a Certificate of Adequacy (COA). If you have any questions or need assistance in completing the Application, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the Application is provided in 33 Code of Federal Regulations Part 158 (33 CFR 158).

1.A. Indicate terminal if you are applying as a single terminal or indicate port if you are applying as a group of terminals. Do not mark "COTP Designated Port," unless you have a letter from the COTP with such a designation. COTP designation of a facility or an area as a port is for unusual situations. If you have a question as to whether COTP designation as a port applies to your situation, contact the COTP for your area.

1.C.(1) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization by which the group of terminals is legally known.

1.C.(3) Enter the name of a person authorized to act in behalf of the terminal or port.

1.C.(5) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization of which the person in charge is a member.

1.D.(1) Those applying as terminals do not have to complete this section, since the information is the same as in 1.C. Ports are to provide this information for each of the terminals indicated in 1.B.

2.A.(1) Enter the company or corporation name of the reception facility.

2.A.(5) Check as many of the types of reception facilities as may be used.

3.A. Enter the value as calculated on the Coast Guard optional worksheet line "A" or other calculation sheet.

3.B. Enter the value as calculated on the Coast Guard optional worksheet line "B" or other calculation sheet. Calculate from vessel traffic at the terminal/port for the last 12 months.

3.C. Describe the waste the reception facility can receive. Enter "oil" for all types of oily waste.

3.D. Describe the ship types or principal trades, e.g., crude tankers, product tankers, container ships, grain ships, fishing vessels, etc.

3.E. Enter a value based upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. Oily ballast discharge rates may be based on discharging through more than one connection if all of the vessels and reception facilities have this capability.

3.F. Enter a value based upon discharging waste through a single connection. This is necessary since ships are not required to discharge waste through multiple connections.

FORM A
APPLICATION FOR A RECEPTION FACILITY
CERTIFICATE OF ADEQUACY
FOR OIL

1. PARTICULARS OF TERMINAL OR PORT

A. APPLYING AS (Mark one): ___ Terminal ___ Port ___ COTP Designated Port

B. NUMBER OF TERMINALS TO WHICH THIS APPLICATION APPLIES: _____

C. (1) NAME OF TERMINAL/PORT _____
(2) ADDRESS OF TERMINAL/PORT _____

(3) NAME OF TERMINAL/PORT PERSON IN CHARGE _____
(4) TITLE/POSITION _____
(5) ORGANIZATION _____
(6) OFFICE PHONE NUMBER ( ) _____

D. INDIVIDUAL TERMINAL INFORMATION: If applying as a port, list the information indicated for each terminal in the port. If more space is needed, continue on a separate sheet and attach to the back of the Application. Signature of person in charge of terminal acknowledges that terminal agrees and consents to being considered as a member of the port, described in section 1, for the purposes of reception facilities. Complete the terminal name, location, etc. below.

(1) a. NAME OF TERMINAL _____
b. ADDRESS OF TERMINAL _____

c. NAME/TITLE PERSON IN CHARGE _____

d. OFFICE PHONE NUMBER ( ) _____

e. SIGNATURE TERMINAL PERSON IN CHARGE _____

(2) a. NAME OF TERMINAL _____
b. ADDRESS OF TERMINAL _____

c. NAME/TITLE PERSON IN CHARGE _____

d. OFFICE PHONE NUMBER ( ) _____

e. SIGNATURE TERMINAL PERSON IN CHARGE _____

2. PARTICULARS OF RECEPTION FACILITY. Enter information for each reception facility used by the terminal/port. If necessary, continue on a separate sheet and attach to the back of the Application.

A. (1) NAME OF RECEPTION FACILITY
(2) ADDRESS _____

(3) NAME/TITLE PERSON IN CHARGE _____

(4) OFFICE PHONE NUMBER ( ) _____

(5) TYPE OF RECEPTION FACILITY: Check those that apply.

FIXED ___ MOBILE: Tank Truck ___ Tank Barge ___ Other ___
(Describe other: _____)

3. RECEPTION AND TRANSFER REQUIREMENTS:

A. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY: (metric tons) _____

B. ESTIMATED DAILY CAPACITY REQUIREMENT OF TERMINAL/PORT: (metric tons) _____

C. TYPES OF WASTE THE RECEPTION FACILITY CAN RECEIVE: _____

D. SHIP TYPES OR PRINCIPAL TRADES OF SHIPS VISITING TERMINAL(S): _____

E. OILY BALLAST WASTE TRANSFER RATE (GPM): _____

F. ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE (GPM): _____

G. RECEPTION FACILITY CAN RECEIVE ALL THE OILY BALLAST FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 10 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

H. RECEPTION FACILITY CAN RECEIVE OTHER OILY RESIDUES AND MIXTURES FROM SHIPS VISITING THE TERMINAL OR PORT WITHIN 4 HOURS OF WASTE TRANSFER COMMENCEMENT. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

I. RECEPTION FACILITIES FOR OIL WASTE WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

J. OILY WASTE WILL BE TRANSFERRED PRIOR TO SHIP LEAVING SHIP REPAIR YARD. Enter either YES, NO, or N/A. (If entering other than YES explain _____) _____

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE TERMINAL/PORT PERSON IN CHARGE _____
PRINTED OR TYPED NAME OF PERSON IN CHARGE _____
DATE SIGNED _____

RECEPTION FACILITY INFORMATION SHEET

********** THIS PAGE FOR COMPLETION BY U.S. COAST GUARD **********

COAST GUARD COTP COMPLETE THE FOLLOWING INFORMATION AND FORWARD TO DISTRICT (m) FOR QUARTERLY SUBMISSION TO COMMANDANT (G-MPS-3):

COTP ISSUING CERTIFICATE OF ADEQUACY _____

NAME OF TERMINAL/PORT _____

LOCATION OF TERMINAL/PORT (City/State) _____

NAME AND PHONE NUMBER OF PERSON IN CHARGE _____

( ) _____

TYPE OF WASTE THE RECEPTION FACILITY CAN RECEIVE _____

CAPACITY OF RECEPTION FACILITY (metric tons) _____

OILY BALLAST WASTE TRANSFER RATE (GPM) _____

ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE (GPM) _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5401A (7-85)

WORKSHEET FOR A CERTIFICATE OF ADEQUACY FOR RECEPTION FACILITIES

Instructions for completing the Worksheet

The following instructions for individual line items are provided to assist in completing the worksheet for a Certificate of Adequacy (COA) Application. If you have any questions or need assistance in completing the worksheet, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the worksheet are contained in 33 Code of Federal Regulations Part 158 (33 CFR 158.120).

Reception Facility Section: This section consisting of line items "A" through "R" is for calculating the estimated capacity of the proposed reception facilities. Those values which require calculation are entered in boxes with the applicable formula printed below.

"A" Enter a value based upon receiving oily ballast through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. If more than one mobile reception facility is used, enter the transfer rate of the slowest mobile reception facility.

"N" Enter a value based upon receiving oily residues and mixtures through a single connection. This is necessary since ships are not required to discharge waste through multiple connections. If more than one mobile reception facility is used, enter the transfer rate of the slowest mobile reception facility. Discharge rates may be based on discharging through more than one connection, if all of the vessels and reception facilities have this ability.

"P" to "R2" Enter data for the types (fixed, tank truck, barge, other) of reception facilities to receive oily waste as appropriate. The types completed should correspond to the entry in 2.A.(5) of the COA Application. Enter estimates of time requirements to the nearest tenth of an hour, e.g. 3.1 hours.

"P" Enter the daily amount of waste that can be removed from the storage tanks by processing or by transfer to a processing or disposal facility.

"T" If more than one mobile tank truck reception facility is used, enter the number of tank trucks available.

"L" If more than one mobile barge reception facility is used, enter the number of barges available.

"R1" and "R2" If the reception facility used is not described above, describe the reception facility and show the calculations for daily capacity and transfer time requirements (attach additional sheets if necessary).

Vessel Waste Section: This section consisting of line items "S" through "AD" is for calculating the estimated capacity of the terminal or port in accordance with the regulations in 33 CFR 158. It is divided into four parts, (I) through (IV). Part (I) is for terminals loading crude oil; Part (II) is for terminals loading oil (other than crude oil) in capacities of 1000 metric tons or more per day; Part (III) is for other terminals loading oceangoing ships; and Part (IV) is for ship repair yards.

Applicants applying as terminals should complete the parts that describe their operation. It may be necessary to complete more than one part. For example a terminal servicing both crude carriers and product carriers would complete Part (I) and either Part (II) or (III) depending upon the volume of product transferred per day.

Ports which have more than one terminal in each category are to enter consolidated information for each part. For example if a port has three terminals loading crude oil, the number of oceangoing crude tankers visiting the port per year reported in section "S" would be equal to the sum of the crude tankers visiting each of the terminals.

The procedures for calculating the estimated reception facility capacities are based upon the specific values and requirements in 33 CFR 158. Applicable conversion factors are as follows:

1 metric ton equals 336 gallons
1 metric ton equals 8 barrels
1 metric ton equals 1 DWT deadweight ton

For lines "U" and "AC" do not include crude tankers equipped with dedicated clean ballast or segregated ballast tanks or non-self propelled tank barges that do not ballast or wash cargo tanks while proceeding enroute. Base values for the average number of ships visiting the terminal on a typical continuous 12 month period. Data should be available to support entries.

Adequacy Criteria Section: This section consisting of line items "AI" through "BE" compares the capacities, transfer rates and ability to provide timely reception facility service to the regulatory requirements. The Certificate of Adequacy cannot be issued unless the following conditions are met for terminals and ports other than ship repair yards.

"AI" is less than "AY";
"BB" is less than 10 hours;
"BF" is less than 4 hours;
"BG" is N/A; and
"BH" is YES.

For ship repair yards the COA cannot be issued unless the following conditions are met:

"AI" is less than "AY";
"BG" is YES; and
"BH" is N/A.

NOTE: Sections "BB" and "BF" are not applicable to ship repair yards.

For ship repair yards the COA cannot be issued unless the following conditions are met:

"AI" is less than "AY";

"BG" is YES; and

"BH" is N/A.

NOTE: Sections "BB" and "BF" are not applicable to ship repair yards.

WORKSHEET FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR OIL

NAME OF TERMINAL/PORT _____

ADDRESS _____

RECEPTION FACILITY CAPACITY AND TRANSFER RATE:

A MAXIMUM TRANSFER RATE CAPABILITY FOR OILY BALLAST. _____ GALLONS PER MINUTE

B MAXIMUM TRANSFER RATE CAPABILITY FOR ALL OTHER OILY RESIDUE AND MIXTURES. _____ GALLONS PER MINUTE

C RECEPTION FACILITIES WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. _____ YES OR NO

CALCULATION OF RECEPTION FACILITY'S DAILY CAPACITY;

FIXED RECEPTION FACILITIES:

D WASTE PROCESSING CAPABILITY OR TRANSFER FROM STORAGE FACILITY. _____ METRIC TONS PER DAY

MOBILE TANK TRUCK RECEPTION FACILITIES:

E NUMBER OF TANK TRUCKS AVAILABLE. _____ NO. OF TRUCKS

IF TANK TRUCKS ARE NOT OWNED, LIST THE NAME AND ADDRESS OF COMPANY(S) WHICH IS/ARE RENTING, LEASING, OR OTHERWISE PROVIDING THEM:

_____

_____

_____

_____

F CAPACITY OF SMALLEST TANK TRUCK. _____ GALLONS

G TIME REQUIRED TO FILL TANK TRUCK WITH OILY BALLAST. [ ] / ("A" X 60) HOURS

H TIME REQUIRED TO FILL TANK TRUCK WITH OTHER OILY MIXTURES. [ ] / ("B" X 60) HOURS

I ESTIMATED TIME BETWEEN FILLING OF TANK TRUCKS: i.e. TIME FOR TANK TRUCK TO OFFLOAD AND RETURN, TIME FOR MAKING CONNECTIONS TO SHIP, etc. _____ HOURS

J ENTER THE VALUE FROM LINE "G" OR "H" WHICHEVER IS GREATEST. [ ] HOURS

K DAILY CAPACITY OF MOBILE TANK TRUCK RECEPTION FACILITIES. [ ] / ("J" + "I") (0.07 X "E" X "F") METRIC TONS PER DAY

BARGE RECEPTION FACLITY CAPACITY:

L NUMBER OF BARGES AVAILABLE. _____ NO. OF BARGES

IF BARGES ARE NOT OWNED, LIST THE NAME AND ADDRESS OF COMPANY(s) RENTING LEASING, OR OTHERWISE PROVIDING THEM.

_____

_____

_____

_____

_____

M CAPACITY OF SMALLEST BARGE. _____ GALLONS

N TIME REQUIRED TO FILL BARGE WITH OILY BALLAST MIXTURES. _____ HOURS

"M" / "A" X 60

O TIME REQUIRED TO FILL BARGE WITH OTHER OILY RESIDUES. _____ HOURS

"M" / "B" X 60

P IF ONLY USING 1 BARGE, ESTIMATE OF LONGEST TIME REQUIRED TO OFFLOAD AND RETURN TO TERMINAL. IF MORE THAN ONE BARGE ENTER 0. _____ HOURS

Q THE VALUE FROM LINE "N" OR "O" WHICHEVER IS GREATER. _____ HOURS

R DAILY CAPACITY OF BARGE RECEPTION FACILITIES. _____ METRIC TONS PER DAY

0.07 X "M" / ("Q" + "P")

OTHER RECEPTION FACILITY CAPACITY:

DESCRIBE COMPETELY AND SHOW CALCULATIONS USED TO ARRIVE AT THE DAILY CAPACITY IN METRIC TONS AND DAILY AVERAGE TRANSFER RATE IN GPM:

_____

_____

_____

_____

R1 _____ METRIC TONS PER DAY **R2** _____ GALLONS PER MINUTE

SIGNATURE OF RECEPTION FACILITY PERSON IN CHARGE _____

PRINTED NAME OF RECEPTION FACILITY PERSON IN CHARGE _____

DATE SIGNED _____

TERMINAL/PORT ESTIMATED RECEPTION FACILITY DAILY CAPACITY REQUIREMENTS

COMPLETE PARTS (I) THROUGH (IV) FOR THE TYPES OF OCEAN GOING SHIPS OIL OPERATIONS CONDUCTED AT YOUR TERMINAL OR PORT. FOR EXAMPLE IF YOUR TERMINAL LOADS CRUDE OIL AND PRODUCT OIL MORE THAN 8000 METRIC TONS PER DAY, COMPLETE PARTS (I) AND (II). PORTS SHOULD ENTER THE SUM OF THE OPERATIONS FOR THE TERMINALS CONSIDERED PART OF THE PORT.

(I) TERMINAL/PORT LOADING CRUDE OIL; ESTIMATED RECEPTION FACILITY CAPACITY REQUIREMENTS

S OCEANGOING CRUDE TANKERS VISITING TERMINAL/PORT PER YEAR. _____ NO. OF TANKERS PER YEAR

T OCEANGOING CRUDE TANKERS VISITING TERMINAL/PORT PER DAY. _____ NO. OF TANKERS PER DAY

"S" / 365

U EXPECTED AVERAGE NUMBER PER DAY OF OCEANGOING OIL TANKERS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING EN ROUTE. _____ NO. OF TANKERS PER DAY

V LARGEST OCEANGOING OIL TANKER EXPECTED TO VISIT TERMINAL/PORT THAT IS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ DEADWEIGHT TONS

(NOTE: DEADWEIGHT TONS EQUALS METRIC TONS)

W SLUDGE ESTIMATED CAPACITY REQUIREMENT (ENTER AT LEAST 10 METRIC TONS). _____ METRIC TONS PER DAY

(1 METRIC TON = 1.1 SHORT TONS = 2,200 POUNDS)

X OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. _____ METRIC TONS PER DAY

10 OR ("T" X 2) WHICHEVER IS GREATER

Y OILY BALLAST ESTIMATED CAPACITY REQUIREMENT. _____ METRIC TONS PER DAY

0.33 X "V" X "U"

Z TOTAL ESTIMATED CAPACITY REQUIREMENTS FOR TERMINAL/PORT LOADING CRUDE OIL. _____ METRIC TONS PER DAY

"W" + "X" + "Y"

(II) TERMINAL/PORT LOADING MORE THAN 1000 METRIC TONS OF OIL PER DAY EXCEPT CRUDE OIL OR BUNKER OIL: ESTIMATED DAILY RECEPTION FACILITY CAPACITY REQUIREMENTS.

AA OCEANGOING OIL TANKERS VISITING TERMINAL/PORT PER YEAR _____ NO. OF TANKERS PER YEAR

AB OCEANGOING OIL TANKERS VISTING TERMINAL/PORT PER DAY. [ ] NO. OF TANKERS PER DAY

"AA" / 365

AC EXPECTED AVERAGE NUMBER PER DAY OF OCEANGOING OIL TANKERS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ NO. OF TANKERS PER DAY

AD LARGEST OCEANGOING OIL TANKER EXPECTED TO VISIT TERMINAL/PORT IN METRIC TONS, THAT IS NOT EQUIPPED WITH DEDICATED CLEAN BALLAST TANKS OR SEGREGATED BALLAST TANKS. DO NOT INCLUDE TANK BARGES THAT DO NOT BALLAST OR WASH CARGO TANKS WHILE PROCEEDING ENROUTE. _____ METRIC TONS (NOTE: DEADWEIGHT TONS EQUALS METRIC TONS)

AE CARGO CAPACITY OF LARGEST TANKER USING THE TERMINAL/PORT IN METRIC TONS. _____ METRIC TONS

AF AMOUNT OF OIL EXCEPT CRUDE OIL, LOADED TO TANKERS THAT BALLAST OR WASH CARGO TANKS EN ROUTE IN METRIC TONS PER YEAR. _____ METRIC TONS PER YEAR

AG AMOUNT OF OIL, EXCEPT CRUDE OIL, LOADED PER DAY. [ ] METRIC TONS PER DAY

"AF" / 365

AH SLUDGE CAPACITY ESTIMATED REQUIREMENT. (ENTER AT LEAST 10 METRIC TONS). _____ METRIC TONS PER DAY

AI OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY

10 OR ("AB" X 2) WHICHEVER IS GREATER

AJ OILY BALLAST CAPACITY ESTIMATED REQUIREMENT. [ ] METRIC TONS PER DAY

0.30 X "AD" X "AC"

AK CARGO RESIDUE CAPACITY ESTIMATED REQUIREMENT. [ ] METRIC TONS PER DAY

0.002 X "AE" X "AB"

AL TOTAL ESTIMATED CAPACITY REQUIREMENTS FOR TERMINAL/PORT LOADING MORE THAN 1000 METRIC TONS OF OIL, EXCEPT CRUDE OIL AND BUNKER OIL. [ ] METRIC TONS PER DAY

"AH" + "AF" + "AJ" + "AK"

(III) OTHER TERMINALS AND PORTS RECEIVING OCEANGOING SHIPS, EXCEPT SHIP REPAIR YARDS; ESTIMATED DAILY RECEPTION FACILITY CAPACITY REQUIREMENTS.

AM OCEAN GOING SHIPS VISITING TERMINAL/PORT PER YEAR. _____ NO. OF TANKERS PER YEAR

AN OCEAN GOING SHIPS VISITING TERMINAL/PORT PER DAY. [ ] NO. OF TANKERS PER DAY

"AM" / 365

AO SLUDGE ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY

"AN" OR 10 WHICHEVER IS GREATER

AP OILY BILGE WATER ESTIMATED CAPACITY REQUIREMENT. [ ] METRIC TONS PER DAY

10 OR ("AN" X 2) WHICHEVER IS GREATER

AQ TOTAL ESTIMATED CAPACITY FOR OTHER TERMINALS AND PORTS RECEIVING OCEANGOING SHIPS, EXCEPT SHIP REPAIR YARDS — [ ] "AO" + "AP" — METRIC TONS PER DAY

(IV) SHIP REPAIR YARD; ESTIMATED RECEPTION FACILITY CAPACITY

AR BUNKER CAPACITY OF LARGEST OCEANGOING SHIP SERVICED — _____ METRIC TONS

AS METRIC TONS OF LARGEST TANKER SERVICED — _____ METRIC TONS

AT ESTIMATED CAPACITY REQUIREMENT FOR OILY BUNKER BALLAST. — [ ] 0.09 X "AR" — METRIC TONS

AU ESTIMATED CAPACITY REQUIREMENT FOR SLUDGE AND SOLIDS FROM CARGO TANKS. — [ ] 0.001 X "AS" — METRIC TONS

AV ESTIMATED CAPACITY REQUIREMENT FOR OILY BALLAST WATER AND WASH WATER FROM INPORT WASHING OF CARGO TANKS. — [ ] 1500 OR (0.045 X "AS") WHICHEVER IS LESS — METRIC TONS

AW LIQUID CARGO RESIDUES — [ ] — METRIC TONS

"AS" TIMES .01 IF LARGEST OCEANGOING TANKER IS A CRUDE CARRIER

"AS" TIMES .005 IF LARGEST OCEANGOING TANKER IS A "BLACK PRODUCT" CARRIER

"AS" TIMES .002 IF LARGEST OCEANGOING TANKER IS A "WHITE PRODUCT" CARRIER

**SEE DEFINITIONS*

AX TOTAL ESTIMATED CAPACITY REQUIRED FOR SHIP REPAIR YARD. — [ ] "AT" + "AU" + "AV" + "AW" — METRIC TONS

COMPARISON OF RECEPTION FACILITY CAPACITY TO TERMINAL/PORT RECEPTION CAPACITY REQUIREMENTS.

AY TOTAL RECEPTION FACILITY ESTIMATED DAILY CAPACITY. *enter this value on line 3.a. of the COA application* — [ ] "D" + "K" + "R" + ("R1" IF APPLICABLE) — METRIC TONS PER DAY

AZ TOTAL ESTIMATED DAILY CAPACITY REQUIRED FOR TERMINAL/PORT. *enter this value on line 3.b. of the COA application* — [ ] "Z" + "AL" + "AO" + "AX" — METRIC TONS PER DAY

IF "AZ" IS LARGER THAN "AY", THEN ADDITIONAL RECEPTION FACILITY CAPACITY IS REQUIRED

WASTE TRANSFER RATE REQUIREMENTS

OILY BALLAST TRANSFER RATE REQUIREMENT

BA DAILY OILY BALLAST ESTIMATED CAPACITY. — [ ] "Y" OR "AJ" WHICHEVER IS LARGER — METRIC TONS PER DAY

BB TIME REQUIRED TO TRANSFER OILY BALLAST. — [ ] "BA" / (.18 X "A") — HOURS

IF THIS VALUE IS LARGER THAN 10 HOURS, THEN THE RECEPTION FACILITY'S TRANSFER RATE FOR OILY BALLAST IS INADEQUATE.

ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE REQUIREMENT

BC SLUDGE AND BULGE WASTES FROM TERMINALS SERVICING CRUDE OIL TANKERS. — [ ] "W" + "X" — METRIC TONS PER DAY

BD SLUDGE AND BILGE WASTES GENERATED FROM TERMINALS LOADING MORE THAN 1000 METRIC TONS OF OIL PER DAY EXCEPT CRUDE OR OIL. — [ ] "AH" + "AI" + "AK" — METRIC TONS PER DAY

BE GREATEST AMOUNT OF BILGE AND SLUDGE WASTES THAT CAN BE EXPECTED TO BE GENERATED. — [ ] "BC", "BD" OR "AP" WHICHEVER IS LARGER — METRIC TONS PER DAY

BF ALL OTHER OILY RESIDUES AND MIXTURES TRANSFER RATE REQUIREMENT

$$\frac{\text{"SE"}}{(0.18 \times \text{"B"})} \quad \text{HOURS}$$

IF VALUE IS GREATER THAN 4 HOURS, THE TRANSFER RATE FOR OTHER OILY RESIDUES AND MIXTURES IS INADEQUATE

BG OILY WASTE WILL BE TRANSFERED PRIOR TO THE SHIP LEAVING THE SHIP REPAIR YARD. _____ YES, NO OR N/A

IF THE ANSWER IS NO, THEN OTHER ARRANGEMENTS MUST BE MADE

BH RECEPTION FACILITIES FOR OIL WASTE WILL BE PROVIDED WITHIN 24 HOURS OF NOTIFICATION. _____ YES, NO OR N/A

IF THE ANSWER IS NO, THEN THIS RECEPTION FACILITY DOES NOT MEET THE MINIMUM REQUIREMENTS

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS WORKSHEET FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF PERSON COMPLETING WORKSHEET _____

PRINTED OR TYPED NAME OF PERSON COMPLETING THIS WORKSHEET _____

DATE SIGNED _____

BILLING CODE 4910-14-C

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

In consideration of the preceding, Subchapter O, Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

PART 151—[AMENDED]

1. The authority citation for Part 151 reads as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b), E.O. 11732, 49 CFR 1.46(m).

2. By revising § 151.09(f) to read as follows:

§ 151.09 Control of discharge of oil.

* * * * *

(f) The person who is in charge of an oceangoing ship that cannot discharge oil residues into the sea in compliance with paragraphs (a), (b), (c) or (d) of this section shall ensure that those residues are—

(1) Retained on board; or

(2) Discharged to a reception facility. If the reception facility is in a port or terminal in the United States, each person who is in charge of each oceangoing tanker or any other oceangoing ship of 400 gross tons or more shall notify the port or terminal, at least 24 hours before entering the port or terminal, of—

(i) The estimated time of day the ship could discharge residues and mixtures containing oil;

(ii) The type of residues and mixtures containing oil to be discharged; and

(iii) The volume of residues and mixtures containing oil to be discharged.

Note.—There are Federal, state, or local laws or regulations that could require a written description of the residues and mixtures containing oil to be discharged. For example, a residue or mixture containing oil might have a flashpoint less than 60°C (140°F) and thus have the characteristic of ignitability under 40 CFR 261.21, which might require a description of the waste for a manifest under 40 CFR Part 262, Subpart B. Occupational safety and health concerns may be covered, as well as evironmental ones.

The notice required in this section is in addition to those required by other Federal, state, and local laws and regulations. Affected persons should contact the appropriate Federal, state, or local agency to determine whether other notice and information requirements, including 40 CFR Parts 262 and 263, apply to them.

* * * * *

3. By adding a new Part 158 to read as follows:

PART 158—RECEPTION FACILITIES

Subpart A—General

Sec.
158.100 Purpose.
158.110 Applicability.
158.120 Definitions and Acronyms.
158.130 Delegations.
158.140 Applications for Certificates of Adequacy.
158.150 Waivers.
158.160 Issuing the Certificate of Adequacy.
158.163 Reception Facility Operations.
158.165 Certificate of Adequacy: Validity.
158.170 Suspension and Revocation of Certificates of Adequacy: Procedure.
158.180 Denial of Entry.
158.190 Appeals.
158.195 Penalty Procedure.

Subpart B—Criteria for Reception Facilities: Residues and Mixtures Containing Oil.

Sec.
158.200 General.
158.210 Ports and Terminals Loading Crude Oil.
158.220 Ports and Terminals Loading more than 1,000 Metric Tons of Oil other than Crude Oil or Bunker Oil.
158.230 Ports and Terminals other than Ports and Terminals under §§ 158.210, 158.220, and 158.240.
158.240 Ship Repair Yards.
158.250 Standard Discharge Connection.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances [Reserved]

Authority: Sec. 4, 94 Stat. 2298 (33 U.S.C. 1903(b)), 49 CFR 1.46(hh).

Subpart A—General

§ 158.100 Purpose.

This part establishes criteria for determining the adequacy of reception facilities and procedures for certifying that those reception facilities are adequate for receiving residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more.

§ 158.110 Applicability.

This part applies to each port or each terminal in the United States or under the jurisdication of the United States that is used by oceangoing tankers or any other oceangoing ships of 400 gross tons or more, except those ports and terminals that are used only by non-self-propelled—

(a) Tank barges carrying oil in bulk that can neither ballast cargo tanks nor wash cargo tanks while proceeding en route;

(b) Tank barges that are not carrying oil in bulk; or

(c) Barges other than tank barges.

§ 158.120 Definitions and acronyms.

As used in this part:

"Bunker oil" means oil loaded into bunker tanks for use as fuel.

"Captain of the Port" (COTP) means the U.S. Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this chapter.

"Clean ballast" has the same meaning as contained in § 157.03(e) of this subchapter.

"Commandant" means Commandant, U.S. Coast Guard.

"Daily average" means the total number of vessels, or quantity of oil or oily waste, handled over a typical continuous 12 month period, divided by 365.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"MARPOL Protocol" (MARPOL 73/78) stands for the international Convention for the Prevention of Pollution from Ships, 1973, (done at London, November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 (done at London on February 17, 1978).

"Oceangoing ship" has the same meaning as contained in § 151.05(j) of this subchapter.

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL 73/78 and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL 73/78.

"Person" has the same meaning as contained in § 151.05(n) of this subchapter.

"Person in charge" means an owner of, an operator of, or a person authorized to act in behalf of a port or terminal.

Note.—The "person in charge" in this part is not necessarily the same person as the "person in charge" referred to in Parts 154, 155, and 156 of this subchapter (as defined in § 154.105 of this subchapter).

"Port" means—

(a) a group consisting of terminals that elect to be considered a port for the purposes of this part;

(b) a port authority or other organization that elects to be considered a port for the purposes of this part; or

(c) a place or facility that has been specifically designated as a port by the COTP.

"Reception facility" means anything capable of receiving shipboard residues

and mixtures containing oil, that includes, but is not limited to—

(a) fixed piping that conveys wastes from the ship to a storage or treatment system;

(b) tank barges, railroad cars, or tank trucks and other mobile facilities; and

(c) any combination of fixed and mobile facilities.

"Segregated ballast" has the same meaning as contained in § 157.03(r) of this subchapter.

"Ship" has the same meaning as contained in § 151.05(q) of this subchapter.

"Tank barge" has the same meaning as contained in 46 CFR 30.10-65.

"Tanker" means a ship constructed or adapted primarily to carry oil in bulk in the cargo spaces.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note.—A ship repair yard is a terminal by definition. A fixed or floating drilling rig or other platform is not a terminal because it is, by definition, a "ship" under § 151.05(q) of this subchapter.

"The Act" means the Act to Prevent Pollution from Ships (94 Stat. 2297, 33 U.S.C. 1901 *et seq*).

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct an inspection of each reception facility for which an application is submitted under § 158.140 to determine if it meets the requirements of—

(1) MARPOL 73/78; and

(2) subpart B of this part;

(b) After determining that the reception facility passes the inspection under paragraph (a) of this section, issue a Certificate of Adequacy to the applicant;

(c) Grant waivers under § 158.150 that do not violate MARPOL 73/78;

(d) Designate ports; and

(e) Deny entry to each oceangoing tanker and any other oceangoing ship of 400 gross tons or more to each port or terminal not holding a valid Certificate of Adequacy issued by the COTP under this delegation.

§ 158.140 Applications for Certificates of Adequacy.

(a) The person in charge may request the Coast Guard to certify that the port's or terminal's facilities for receiving residues and mixtures containing oil from oceangoing tankers or any other oceangoing ships of 400 gross tons or more are adequate by applying to the COTP of the Zone in which the port or terminal is located.

(b) Each application for a Certificate of Adequacy must be in writing and contain the following:

(1) The name, mailing address, and telephone number of the person in charge.

(2) The geographic location of each terminal.

(3) The types, principal trades, and daily average number of oceangoing tankers and any other oceangoing ships of 400 gross tons or more using each port and terminal.

(4) The following information for each reception facility:

(i) The daily average amount of residues and mixtures containing oil that it can receive.

(ii) A statement indicating whether or not the transfer rate under § 158.200 can be met.

(iii) The name, address, and telephone number of the person who is in charge of the reception facility.

(iv) If the reception facility is not under the control of the person in charge of the port or terminal, a statement from the person who is in charge of the reception facility of the daily average amount of residues and mixtures containing oil that will be accepted from oceangoing ships using the port or terminal.

(5) Any additional information requested by the COTP.

§ 158.150 Waivers.

(a) If the person in charge believes that a requirement in this part is unreasonable or impracticable for the port's or terminal's operations, the person in charge may submit an application for a waiver to the COTP. This application must—

(1) Be in writing; and

(2) Include the—

(i) Reasons why the requirement is unreasonable or impracticable;

(ii) Proposed alternatives that meet MARPOL 73/78; and

(iii) Additional information requested by the COTP.

(b) If the COTP grants a waiver under this section, the waiver—

(1) Is in writing; and

(2) Specifies each alternative that applies and the requirement under this part for which the alternative is substituted.

(c) The waiver issued under paragraph (b) of this section must be attached to the Certificate of Adequacy issued under § 158.160.

§ 158.160 Issuing the Certificate of Adequacy.

(a) After reviewing the application, conducting an inspection, and consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP—

(1) Issues a Certificate of Adequacy to the applicant; or

(2) Denies the application for the Certificate of Adequacy and informs the applicant in writing of the reasons for the denial.

(b) The Certificate of Adequacy shows any waivers that are granted under § 158.150 at issuance.

§ 158.163 Reception facility operations.

(a) Each person in charge and each person who is in charge of a reception facility shall ensure that the reception facility does not operate in a manner that violates any requirement under this part.

(b) A copy of the Certificate of Adequacy must be—

(1) At each port and terminal; and

(2) Available for inspection by the COTP and the master, person who is in charge, or the agent of an oceangoing ship.

(c) Ports and terminals required to have a Coast Guard Operations Manual must have a copy of the Certificate of Adequacy, including any waivers, attached to that operations manual.

§ 158.165 Certificate of Adequacy: Validity.

(a) Each Certificate of Adequacy remains valid unless suspended or revoked under § 158.170.

(b) A Certificate of Adequacy which has been suspended or revoked must be returned to the COTP.

(c) The person in charge shall notify the COTP in writing within 10 days after any of the information supplied under paragraph (b)(4) of § 158.140 changes.

(d) The person in charge shall notify the COTP in writing within 30 days after any of the information supplied under paragraph (b)(1), (b)(2), or (b)(3) of § 158.140 changes.

§ 158.170 Suspension and revocation of Certificates of Adequacy: Procedure.

(a) If the COTP has evidence that the reception facility does not operate in accordance with § 158.163, the COTP notifies the person in charge of the grounds for suspension or revocation. After notification, the COTP may immediately suspend the Certificate of Adequacy if continued operations will result in undue delay to oceangoing tankers or any other oceangoing ships of 400 gross tons or more.

(b) Evidence or arguments for the retention of the Certificate of Adequacy that are submitted to the COTP within thirty days after notice or suspension occurs under paragraph (a) of this section are considered before further action is taken. If the person in charge fails to meet any measures ordered by the COTP, the COTP may do the following:

(1) Suspend or revoke the Certificate of Adequacy.

(2) Initiate civil or criminal penalty action under Subpart 1.07 of this chapter.

(c) The suspension or revocation of the Certificate of Adequacy by the COTP may be appealed under the procedure in § 158.190.

§ 158.180 Denial of entry.

After March 10, 1986, no oceangoing tanker or any other oceangoing ship of 400 gross tons or more, required by Regulation 9 of Annex I of MARPOL 73/78 to retain on board while at sea, oil or oily mixtures, may enter any port or terminal to which this part applies unless—

(a) The port or terminal has a valid Certificate of Adequacy; or

(b) The ship is entering under force majeure.

§ 158.190 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the Coast Guard District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard, Washington, D.C. 20593; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Chief, Office of Marine Environment and Systems issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 158.195 Penalty procedure.

(a) Section 9 of the Act (33 U.S.C. 1908) states:

(a) A person who knowingly violates the MARPOL Protocol, this chapter, or the regulations issued thereunder shall, for each violation, be fined not more that $50,000 or be imprisoned for not more than 5 years, or both.

(b) A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol, this chapter, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation; or

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, this chapter, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.

(b) Civil and criminal penalty procedures are in Subpart 1.07 of this chapter.

Subpart B—Criteria for Reception Facilities: Residues and Mixtures Containing Oil.

§ 158.200 General.

(a) Except as allowed in paragraph (b) of this section, the reception facility used to meet Subpart A must—

(1) Be permanently or temporarily located in the port or terminal;

(2) Hold each state, local, and Federal permit and license required by environmental laws and regulations concerning residues and mixtures containing oil; and

(3) Be capable of—

(i) Receiving residues and mixtures containing oil from the ship within 24 hours after notice by that ship;

(ii) Completing the reception of oily ballast from the ship in less than 10 hours after waste transfer operations begin; and

(iii) Completing the reception of other residues and mixtures containing oil in less than 4 hours after the transfer operation begins.

(b) Reception facilities for ship repair yards do not have to meet paragraphs (a)(3)(i) through (a)(3)(iii) of this section, but must be capable of completing transfer of residues and mixtures containing oil from each oceangoing ship before the ship departs from the ship repair yard.

§ 158.210 Ports and terminals loading crude oil.

The reception facility for a crude oil loading port or terminal must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons);

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing tankers using the port or terminal, whichever quantity is greater; and

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading crude oil at the port or terminal that do not have clean ballast tanks (CBT), segregated ballast tanks (SBT), or crude oil washing (COW) meeting Part 157 of this subchapter, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater.

§ 158.220 Ports and terminals loading more than 1,000 metric tons of oil other than crude oil or bunker oil.

The reception facility for an oil loading port or terminal that loads a daily average of more than 1,000 metric tons (1,100 short tons) of oil other than crude oil or bunker oil to oceangoing tankers must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons);

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing tankers using the port or terminal, whichever quantity is greater;

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, at the

port or terminal, that do not have CBT or SBT meeting Part 157 of this subchapter, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater; and

(d) Cargo residue in the amount of 0.2% of the total cargo capacity of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, from the port or terminal, multiplied by one or the daily average number of oceangoing tankers, whichever quantity is greater.

§ 158.230 Ports and terminals other than ports and terminals under §§ 158.210, 158.220, and 158.240.

Reception facilities for ports and terminals other than those under §§ 158.210, 158.220, and 158.240 of this subpart and those that are used exclusively by non-self-propelled tank barges, must have the capacity for receiving—

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons), or 1 metric ton (1.1 short tons) multiplied by the daily average number or oceangoing ships using the port or terminal, whichever quantity is greater; and

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily average number of oceangoing ships using the port or terminal, whichever quantity is greater.

§ 158.240 Ship repair yards.

The reception facility that services oceangoing ships using a ship repair yard must have a capacity for receiving—

(a) An amount of ballast from bunker tanks, and the wash water and residues from the cleaning of bunker tanks and sludge tanks, equal to 8% of the bunker capacity of the largest oceangoing ship serviced;

(b) An amount of oily solids from cargo tanks equal to 0.1% of the deadweight tonnage of the largest oceangoing tanker serviced;

(c) An amount of oily ballast water and wash water from in-port tank washing equal to—

(1) 1,500 metric tons (1,650 short tons), or;

(2) 4½% of the deadweight tonnage of the largest oceangoing tanker serviced; and

(d) An amount of liquid cargo residues based on the following percentages of deadweight tonnage of the largest oceangoing tanker serviced:

(1) For crude oil oceangoing tankers, 1%.

(2) For black product oceangoing tankers, 0.5%

(3) For white product oceangoing tankers, 0.2%

§ 158.250 Standard discharge connection.

Each reception facility that received oily bilge water must have a standard discharge connection that—

(a) Meets § 155.430 of this subchapter; and

(b) Attaches to each hose or pipe that removes oily bilge water from oceangoing ships.

Subpart C—Criteria for Reception Facilities: Noxious Liquid Substances—[Reserved]

Dated: April 3, 1985.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 85-20964 Filed 9-6-85; 8:45 am]

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Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 36

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 36

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations

August 19, 1985.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which establishes minimum academic standards for the basic education of Indian children and national criteria for dormitory situations. The minimum academic standards shall apply to all schools operated by the Bureau of Indian Affairs. The national criteria for dormitory situations shall apply to all Bureau-operated and all Indian controlled contract schools having dormitories.

EFFECTIVE DATE: These regulations shall become effective on or before October 9, 1985.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, D.C. 20245, telephone number (202) 343–4872.

SUPPLEMENTARY INFORMATION: The authority for issuing these rules is Pub. L. 95–561, the "Education Amendments of 1978", and 25 U.S.C. 2003. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary Indian Affairs by 209 DM 8.

On March 23, 1983, the Bureau of Indian Affairs published a proposed rule on the Minimum Academic Standards For The Basic Education Of Indian Children and National Criteria For Dormitory Situations in the **Federal Register** (48 FR 12312). This rule establishes:

(1) Minimum academic standards for the basic education of Indian children for Bureau-operated schools; and

(2) National criteria for dormitory situations for schools operated by the Bureau of Indian Affairs and Indian-controlled contract schools operating dormitories.

The public was invited to offer comments on the proposed rule on or before May 9, 1983. Seventy-eight public commenters responded on time. All comments were carefully considered. From the 78 public commenters, there were 580 comments on specific sections and 68 comments addressing the larger concerns of education. Each comment was considered by the Office of Indian Education Programs, which accepted, rejected, or adopted a modified version of each comment.

The Bureau's responses to the comments received have been organized first by broad general category and then by subpart. The broad general comments are categorized and responses are provided, then each specific comment is addressed in the section of the proposed regulations to which it relates. Some accepted responses necessitated removing sections or paragraphs of the proposed regulations and adding new sections or paragraphs. In several instances, these changes required redesignating sections. For purposes of consistency, all section numbers appearing in this **SUPPLEMENTARY INFORMATION** portion of the Preamble refer to the proposed regulations as published in the **Federal Register** on March 23, 1983. Each comment is followed by the Bureau's response.

General Comments

Sixty-eight comments addressed under this section are those concerned with the broad areas of Indian education rather than specific sections in the proposed rulemaking.

Comment. One commenter corrected the statement in the Supplementary Information section that said, "Historically, the Bureau of Indian Affairs has not established written Bureau-wide standards for the basic education of Indian Children attending Bureau-operated schools."

Response. The Bureau acknowledges the error in the statement that the Bureau had no educational standards prior to the present proposed standards. The commenter points out correctly that minimum standards had been developed in 1959 and 1961, and housekeeping requirements for boarding and day schools were issued in 1962.

Comment. Four commenters opposed the omission of pre-kindergarten standards from the proposed minimum academic standards.

Response. The Bureau omitted the pre-kindergarten standards based on Pub. L. 95–561 § 1121 which provides only for the establishment of basic academic program standards. The Bureau does not believe pre-kindergarten programs should be considered as a basic program standard.

Comment. Twenty-one commenters focused on issues such as the goals and philosophy of Indian education, degree of local involvement, appropriateness of the proposed standards, discrimination through application of state standards, demands made by the standards, staff certification requirements, and undercutting the role of tribes and local school boards in selecting and developing their own standards.

Response. Many questions were asked about how to improve the education of Indian children. Questions included: What should the philosophy of Indian education be? What standards should be required? Does the degree of local involvement make a difference? The question of appropriateness and similar questions have differing points of view, and even educators cannot agree on many of the answers. The Bureau, in developing the standards, believes the following: To have clear objectives is desirable; to plan is sensible; to coordinate is reasonable; to regulate ensures equal treatment; to follow procedures is to ensure fairness; and to require rules and regulations can help schools become more equitable, efficient, and effective. Furthermore, the intent of these regulations is to establish only the basic minimum requirements and allow the local schools to build on the basic requirements. The basic minimum requirements would allow the Bureau to establish a benchmark for evaluating its educational program. The basic requirements would lay the foundation from which the Bureau can document the progress of its basic programs. That documentation would provide the Bureau of information with which to guide its educational policies.

Comment. Twenty-six commenters addressed issues concerning adequate funding for the implementation of the proposed minimum academic standards and the dormitory criteria and the inadequacy of the Indian School Equalization Program (ISEP) in meeting the standard requirements for small schools.

Response. Upon final publication of this part, Pub. L. 98–46, the technical amendments for the "Education Amendments of 1978" (Pub. L. 95–561), requires the Bureau to revise the Indian School Equalization Program (ISEP) to reflect the cost and funding required to implement the academic standards and dormitory criteria.

Comment. Five commenters recommended that the proposed academic standards and dormitory criteria be placed on hold, withdrawn, or rejected. The commenters believed that: School boards and students should be given a chance for more input; the proposed standards violate the Bureau's education policies; and the standards erode the rights of school boards and tribes.

Response. Sections 1121 and 1122 of Pub. L. 95–561 require the Bureau to consult tribes and develop academic standards and dormitory criteria for Bureau-operated schools. The proposed standards and criteria have undergone four major revisions. The first draft set of standards was developed as a result of information received from 15 field hearings. The second draft was developed by a task force selected from field locations and that draft proposed practical modifications to the first draft. A copy of the second draft was sent to all schools, Indian tribes, tribal organizations, special interest groups and selected Federal and State agencies for their comments. A second task force was established to review the comments, and a third draft was developed. A review of the third draft revealed that many of the standards and criteria as written appeared to limit the authorities of local schools. With this in mind, the Bureau attempted to rewrite the third draft reflecting the concept of local control while keeping within the limits of the law. (The notification process included copies of the proposed standards being mailed to all tribes, schools, and school boards for their comments.) The fourth and present set of standards, as required by law, attempts to develop basic educational standards. Any additional requirements would be at the discretion of the local schools and school boards. The Bureau believes that these standards meet the requirements of the law and are consistent with Bureau policy. The Bureau also believes that any standard published should be reviewed periodically and revised when necessary. The Bureau views the standards as the basic foundation for improving educational opportunities for Indian children.

Comments. Supporting comments were received from 11 persons who agreed with the contents of the proposed rulemaking and believed that the requirements in the standards could be the beginning of improving Indian education in the Bureau of Indian Affairs.

The following section responds to general and specific comments received from the public for each subpart.

Comments and Responses

Subpart A—General Provisions

General Comments. Two commenters suggested that due to the imminent proliferation of computer science education, computer literacy, and computer-assisted instruction, these terms should be defined. *Response.* The Bureau disagreed with this suggestion of including computer science education and computer-assisted instruction since the terms are not used in the standards. However, the term "computer literacy" has been added to the definition section. Two commenters suggested that the term "enrichment" should be inserted and defined in the definition section. *Response.* The term "enrichment" is not used anywhere in the proposed rulemaking, therefore, the suggestion was not accepted. One commenter recommended we include a definition of "practical arts". *Response.* The Bureau disagreed with the recommendation. The definition of "practical arts" is a standard term for a subject content area and will not be defined here. One commenter suggested adding the definition of "counselor". *Response.* We accepted the suggestion and have added the term "counselor" to the definition section. Another commenter recommended nine additional terms which should be included and defined. Each term is addressed in the following response. *Response.* The terms "goals" and "objectives" were accepted and added to the definition section. The term "program level" was rejected. However, the term was modified and the word "program" deleted and replaced with "grade", making the term "grade level", which should clarify its usage. The term "teacher" was accepted and is included under the definition section. The term "interdisciplinary approach" has been removed from the text and therefore will not be defined. The term "grading" is self-explanatory. "Criterion-referenced test" was accepted and added. The terms "textbook" and "student activities" were rejected since they are standard terms and self-explanatory. The term "Homeliving Specialist" was not accepted since it is defined at § 36.71(a).

Section 36.1 Purpose, scope, and information collection requirements.

Comment.—Effective Date of Rule § 36.1(b). Two comments were received. One commenter was concerned that the standards would take effect immediately on the day of publication. The second comment concerned additional costs that might be required for meeting the proposed standards.

Response. The sentence concerning effective date has been amended. Sections 1121 and 1122 and Pub. L. 95–561 require the Secretary to begin implementation of the academic standards and the dormitory criteria immediately upon the date of the their final publication, which in accordance with 5 U.S.C. 553(d) will be 30 days after the date of publication in the **Federal Register.** As to the additional need for funds to meet the proposed requirements, the Bureau is required by Pub. L. 96–46 to revise the current funding formula to reflect the cost of education based on the establishment of the standards and criteria required by §§ 1121 and 1122 of Pub. L. 95–561.

Section 36.2 Applicability.

Comment.—Bureau-operated Schools § 36.2(a). Two comments were received. One commenter agreed that minimum standards are needed for schools. The other commenter recommended that §§ 36.2(a), 36.20(d), and 36.61 need to be reconciled so they are not fragmented and contradictory.

Response. Paragraph 36.61(a) was amended to state that Bureau-operated schools, if designated by the tribal governing body, do not have to request a waiver but instead could waive, in part or in whole, the standards established under this part. However, that section was further amended to make clear that applicable standards must at all times be in effect for Bureau-operated schools. Paragraph 36.20(d) was removed since states do not have control over Bureau-operated schools. In addition, § 36.2(a) was amended to include parental notification in cases where waiver actions are taken.

Comment.—Contract Schools § 36.2(b). Two commenters disagreed with this paragraph because the minimum academic standards do not apply to Indian-controlled contract schools.

Response. No change was made. Section 1121(e) of Pub. L. 95–561 exempts Indian-controlled contract schools from the academic standards.

Comment.—Dormitory Criteria § 36.2(c). One commenter questioned the rationale for not making the minimum academic standards applicable to Indian-controlled contract schools but making the dormitory criteria mandatory for the same schools.

Response. No change has been made. Section 1122, National Criteria for Dormitory Situations of Pub. L. 95–561, does not include a waiver provision as does § 1121, Academic Standards.

Comment.—Minimum Requirements § 36.2(d). One commenter indicated that it is not clear exactly how the Bureau is to comply with this section of the law. He suggested that at the very least the Bureau should examine existing standards in states with Bureau schools to insure that the proposed standards do not fall below state standards.

Response. The Bureau amended this paragraph by removing everything after the word "program". The standards now reflect the mandate that these standards

will serve as minimum requirements for the regular school educational program.

Comment.—State Education Standards § 36.2(e). Twelve comments were received regarding this paragraph. One commenter suggested that we remove this paragraph entirely and that the Bureau provide standards for teacher performance in place of certification requirements. Two commenters indicated that this paragraph had conflicting requirements and that schools had to either adopt a "Bureau standard" or a "state standard", but not both. Five comments were made that (1) state minimum standards should also be applicable to all levels of administration; (2) state minimum standards should be applicable to Indian-controlled schools; (3) the Bureau should set its own standards above the state minimum standards; (4) there is a question of the feasibility of "accreditation accomplishment" (judgment) by the state; and (5) state standards should not contradict these proposed standards and should be realistic for Bureau schools. One commenter stated that compliance with state standards has historically resulted in poor education for Indian children. One commenter recomended that the state guidelines should be adhered to as they pertain to kindergarten students and number of instructional days. One commenter held that this paragraph is not in complete accordance with section 2001(c) of the statute (Pub. L. 95–561; 92 Stat. 2143). A last commenter held that this rule adopts "state minimum standards for education for Bureau schools in the state in which they are located".

Response. Paragraph (e) of section 36.2 was revised to clarify the language regarding minimum state standards as they apply to Bureau schools. This was corrected by requiring each Bureau school to at least meet the minimum state accreditation standards. The basic intent was to ensure that Bureau standards do not fall below the minimum accreditation standards of the state in which the schools are located.

Section 36.3 Definitions.

Comment.—Agency § 36.3(c). One commenter recommended changing the definition of "Agency" by adding "Area Offices" after the word "Bureau" in the first sentence and rewriting the second sentence to include all types of schools.

Response. The Bureau disagreed with the commenter which amends the definition of "Agency" to include "Area Offices". However, since the types of schools supervised by an Agency in the second sentence are included elsewhere in this part and defined in 25 CFR 39.2(q), this sentence was removed.

Comment.—Area Education Program Administrator § 36.3(f). One commenter indicated that this definition gives the impression that Area Education Programs Administrators are "in charge of Bureau education programs within an Area". Another commenter suggested adding "in some cases, on-reservation day schools".

Response. The Bureau disagreed with the first commenter in that the definition gives the impression that Area Education Programs Administrators are in charge of all Bureau programs in an Area. The definition includes functions in a Bureau Area Office. This does not include Agency responsibilities. However, we did agree with the second commenter and added the phrases "on-reservation day schools" and "which are not served by an Agency Superintendent for Education" for further clarification.

Comment.—Basic Academic Skills § 36.3(h). One commenter indicated that this definition is circular and no clear distinction is readily apparent between "basic academic skills" and "basic education". It was also suggested that the term "basic academic skills" be removed here and added in the term "basic education".

Response. We disagreed. However, the definition of "basic academic skills" has been amended to emphasize the mastery of school work or other activities (e.g., proficiency in planning and investigating, operational techniques, comprehension, organization, execution, remembrance, and application of knowledge to acquire a desired result).

Comment.—Basic Education § 36.3(i). Two comments were received. One commenter suggested that the term "basic education" should include meeting regional accreditation requirements. The other commenter questioned the meaning of "basic education" and whether it included core subjects or core curriculum.

Response. Basic education is usually defined as those components or subject matters that are essential for functioning in society. We disagreed with the comments because the standards define basic education as school subjects which are essential for functioning in society and because the regional accreditation definition goes beyond this definition. Regarding the comment whether basic education definition includes core subjects or core curricula, basic education includes core subjects that are make up the instructional program. No change was made.

Comment.—Staff Certification § 36.3(k). One commenter asked if the Administration would support a policy for all teachers (not just contract personnel) becoming state certified.

Response. Pub. L. 95–561 requires state certification of contract educators. Currently, a review is underway in reference to certification requirements for status quo employees. No change was made since personnel requirements are not included in these proposed standards.

Comment.—Competency § 36.3(l). Two commenters recommended that this definition be reworded because competency is not just any level of mastery.

Response. The definition was amended by inserting the phrase "a specified level of mastery" after the word "or" and removing the last phrase "in a given course of study".

Comment.—Education Media Specialist § 36.3(s). One commenter indicated that the definition "Educational media specialist" is circular and the term appears self-explanatory.

Response. The Bureau agreed with the comment, and the definition "Educational media specialist" has been removed.

Comment.—Exceptional Child Program § 36.3(t). One commenter recommended that standards be established for the "Exceptional Child Program" and included as part of these standards.

Response. Standards for the Exceptional Child Program are scheduled to be published as part of the Bureau's "Special Education Program" in the near future. Therefore, the recommendation was not accepted; however, this definition has been redesignated as § 36.3(w).

Comment.—Formative Evaluation § 36.3(v). One commenter suggested a redefinition of the term "formative evaluation" to read: "Formative evaluation" is evaluation of progress during the implementation of a program. Its purpose is to provide immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

Response. The Bureau agreed with the commenter and the definition was accepted. This definition has been redesignated as § 36.3(y).

Comment.—Indian Student § 36.3(z). Four commenters suggested that this definition should include the phrases "enrolled in a federally-recognized Indian tribe" and "be of one-quarter (¼) or more degree of Indian blood quantum".

Response. The definition of Indian tribe in § 36.3(aa) and now in § 36.3(ff) further defined "Indian student", and additional wording would be repetitive. However, the one-fourth blood degree requirement was accepted and has been included as part of the definition of "Indian student". This definition has been redesignated as § 36.3(ee).

Comment.—Intense Residential Guidance § 36.3(bb). One commenter questioned the Bureau's general personnel requirements for meeting the qualifications and duties of providing services to the "intense residential program".

Response. No change was made. The personnel requirements for the Bureau's education program are currently under review. Comments regarding personnel will be appropriate when the personnel revisions are published for public comment. This definition has been redesignated as § 36.3(gg).

Comment.—Kindergarten § 36.3(cc). Two commenters suggested that the definition of "kindergarten" should include a requirement that a student should "at least be 5 years old by December 31 of the school year".

Response. No change was made. The term "kindergarten" under this part is defined to mean grade or class level in the organization of the education program. The age requirement is defined under 25 CFR § 39.11(f) and should not be repeated here. This definition is redesignated as § 36.3(ii).

Removed.—Medically-trained Person § 36.3(ff). The term "medically-trained person" has been removed since it is not used in the standards.

Comment. Paraprofessional § 36.3(gg). One commenter recommended that the definition "paraprofessional" be removed since the term is only used twice and in both cases is unclear as to how the person "works with and assists" a professional staff member since dorm aides frequently are on duty alone.

Response. The Bureau disagreed; however, the definition of paraprofessional has been amended and additional language has been added to further clarify the term. This definition has been redesignated as § 36.3(mm).

Comment.—Peripheral Dormitory § 36.3(ii). One commenter thought this was a repeat of the definition "dormitory" under § 36.3(q).

Response. No change was made. The definition of "peripheral dormitory" refers only to boarding and lodging and is only for the purpose of students attending public schools. This definition has been redesignated as § 36.3(oo).

Comment.—Regular Program Students § 36.3(jj). One commenter indicated that the definition of "regular program students gives the impression that the handicapped student is not also a regular program student".

Response. The Bureau agreed with the comment. The word "except" in the definition has been changed to "including". All handicapped students are first regular program students and then, because of their special need, they receive additional services from the Exceptional Child Program. This definition has been redesignated as § 36.3(pp).

Comment.—School § 36.3(mm). One commenter stated that the public school portion of cooperative schools is not subject to compliance with these rules and regulations.

Response. The Bureau agreed with the commenter, and removed the last sentence of this definition. This definition is redesignated as § 36.3(ss).

Comment.—School Board § 36.3(nn). One commenter questioned the value of and need for an "Area" school board, because it would be too far removed from the schools to be of any value. Also questioned were the authorities of the board.

Response. The Bureau agreed with the comment. To ensure more local involvement and since "Area school board" is not mentioned by Pub. L. 95–561, we have removed the word "Area" in the definition of "school board". This definition has been redesignated as § 36.3(tt).

Comment.—School Day § 36.3(oo). Two comments were received concerning the terms "school day" and "instructional day". One commenter recommended that consideration be given to adopting the number of instructional days as required by the state in which the school is located. The other commenter indicated that the term "school day" is self-contradictory and recommended that the second half of the definition be removed. Further, it was recommended that any limitation on "counting" of such days be moved to § 36.20.

Response. The Bureau disagreed with the first comment for adopting the number of instructional days as required by the state in which a school is located. We believe that a standard number of instructional days should be required of all Bureau-operated schools since some states require as little as 160 days per school term. However, the Bureau agreed with the second commenter regarding the term "school day" and has removed the last sentence under this definition. The reference to counting of days is added to § 36.20(c). The definition of "school day" has been redesignated as § 36.3(uu).

Comment.—Summative Evaluation § 36.3(tt). Two comments were received. One commenter believed that "comparative evaluation" meets the definition of "summative evaluation". The other commenter beleived that the proposed definition of "summative evaluation" deviates significantly from the conventional meaning of the term and should be redefined.

Response. The Bureau agreed with both comments and the definition of "summative evaluation" has been rewritten in the standard to reflect a more conventional meaning by accepting the second commenter's definition. This definition has been redsignated as § 36.3(zz).

Added.—Definition of Teacher § 36.3(aaa). The definition of teacher reads as follows: " 'Teacher' means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation."

Removed.—Revision of Regulations § 36.4. This section has been deleted. This section is covered by Pub. L. 89–554, § 1, 80 Stat. 383, which includes the procedures for general notice of proposed rulemaking and revision for the public and interested parties and need not be repeated here.

Subpart B—Educational Management

General Comments. One commenter recommended that dormitories be included in this section of the standards. *Response.* The Bureau disagreed with the recommendation. The authority under Pub. L. 95–561 §§ 1121 and 1122 addresses two different parts. Contract schools by waiver under § 1121 may be excluded. Under § 1122, the dormitory criteria cannot be waived. Therefore, the rulemaking must address the two issues under two different parts. No change was made. *Comment.* One commenter suggested we include the "full maximum knowledge of tribal history and our great forefathers" in the statements of philosophy. *Response.* The Bureau disagreed with the suggestion. The Bureau believes the development of specific statements of philosophy should rest at the local school level. No change was made. *Comment.* One commenter suggested greater treatment in the area of "student rights and responsibilities". *Response.* Pub. L. 95–561 Section 1137 requires the Secretary to establish rules and regulations to insure the constitutional and civil rights of Indian students attending Bureau schools. Rules and regulations for students rights, currently being developed and which should be issued for public

comment in the near future, will propose to amend and modify the present 25 CFR Part 42. The suggestion was not accepted. *Comment.* One tribal contract school official questioned whether the adoption of the local school curriculum standards and school calendar would violate the requirements under this section. *Response.* It would be permissible for contract schools to adopt State curriculum standards. However, all schools must meet the 180 day requirement under ISEP. *Comment.* Three commenters stated that philosophy and educational objectives are usually not included together, and the use of the term "objective" should be moved and included in the education plan or under curriculum. Further, they suggested the term "goals" be moved from § 36.12(b) to § 36.10(a) and the heading and section be rewritten. *Response.* The Bureau agreed with the commenters. Paragraph (a) of § 36.10 was revised. The statement of objectives was moved to another paragraph (§ 36.12(a)). This paragraph has also been amended to attain clarity. *Comment.* One commenter insisted on maximum involvement of educators and parents in solving education problems at the operational as well as administrative levels. Therefore, it was recommended that the words "whenever practical" be removed from § 36.10(a). *Response.* The Bureau agreed and the term has been removed. *Comment.* Another commenter suggested that the "philosophy" should be established locally and should not include a list of required courses. *Response.* The Bureau agreed with the comment, and the listing of measurable educational objectives and content areas has been removed from this section. *Comment.* Another commenter recommended that the requirement for an annual review of the philosophy and objectives be changed to every three years. *Response.* The Bureau disagreed and believes that the philosophy, goals, and/or objectives should have an ongoing review process and be revised when necessary. However, the phrase "by each school" was added. The recommended three-year time schedule for review is too long to be realistic in this rapidly changing society and no change was made to the recommendation.

Section 36.10 Standard I—Philosophy and goals.

Comment.—Interpretation of Standards § 36.10(b). Two commenters suggested that this paragraph be eliminated since it serves no purpose because the literacy levels among Indian adults in certain areas are so low. Further, it was suggested that meeting the requirements would be too costly and that the paperwork requirement is not an adequate means of communication with Indian parents.

Response. The Bureau disagreed because it believes that the school is an important part of the community and that it is obligated to inform and involve the community. The Bureau believes that every school must make systematic efforts to explain its aspirations, policies, procedures, needs, programs, and status to the school community. However, this paragraph has been amended to provide consistency and omit redundant language. This paragraph has also been redesignated as § 36.10(e). In addition, § 36.10(a) has been divided into four separate subparts for consistency and clarity. Subpart (a) provides for the written philosophy and goals. Subpart (b) provides for the involvement of students, parents, lay citizens, school staff, and tribal members. Subpart (c) requires the philosophy and goals to be reviewed annually and revised as necessary. Subpart (d) requires copies of the philosophy and goals to be submitted to the Agency and Area Offices.

Section 36.11 Standard II—Administrative requirements.

The heading for § 36.11 has been amended to read as Standard II—Administrative requirements, and the words "organizational requirements" have been removed.

Comment.—Applicability of Program Level § 36.11(a) (1) and (2). One commenter asked if "kindergarten" programs will be required under this section. Another commenter asked if this requirement allowed for a Kindergarten through 8 organizational pattern.

Response. Due to the confusion of this section and since the program levels as stated here are definitions, the program level terms have been moved to the definition section and are in alphabetical order. "Kindergarten" has been redesignated as § 36.3(ii), "elementary school" has been redesignated as § 36.3(v), "junior high" or "middle school" has been redesignated as § 36.3(hh), and "high school" has been redesignated as § 36.3(cc).

Comment.—Teacher Certification § 36.11(b). One commenter insisted that teachers be certified and experienced in their instructional areas and have a basic knowledge of American Indian culture, and, further, that this provision be included in the staffing provision.

Response. The Bureau is in the process of reviewing its personnel standards, 25 CFR Part 38. One major issue under review is teacher and administrator certification. No change was made; however, this section has been redesignated § 36.11(a).

Comment.—Student/Teacher Ratios § 36.11(b)(1). Four commenters recommended that the student/teacher ratios be lowered. As an alternative, they suggested teacher aides be included in the present proposed ratios.

Response. The Bureau disagreed that the student/teacher ratios should be lowered. As a whole and at the time, these ratios were comparable with other state requirements where we have schools. Teacher aides are not part of a basic instructional program. We believe these ratios are better than average and will provide a benchmark for ascertaining an optimum level based on educational needs. No change was made; however, this paragraph has been redesignated as § 36.11(a)(1).

Comment.—Teacher Aides § 36.11(b)(1). Three commenters suggested that we include a teacher aide for each ratio and increase the class size by one-third.

Response. The Bureau disagreed. Teacher aides are not usually considered in the definition of basic education support. Therefore, the suggestion was not accepted. This paragraph has been redesignated as § 36.11(a)(1).

Comment.—Funding for Student/Teacher Ratios § 36.11(b)(1). One commenter questioned the insufficient funding of the ISEP formula to meet the overall student/teacher ratio requirements in the schools.

Response. Once the standards are published in final form, the Bureau is required by Pub. L. 95–561 to revise the ISEP formula to meet the cost of education and reflect the student/teacher ratio cost. No changes were made; however, this paragraph has been redesignated as § 36.11(a)(1).

Comment.—Daily Teaching Load § 36.11(b)(3). Two commenters recommended that the daily teaching load per teacher be increased from 150 to 200 if a full-time aide is provided. *Response.* The Bureau disagreed. Usually a teacher aide is not considered in the definition of basic education support. The number 150 agrees with the 25:1 student/teacher ratio and is 10 less than the state average of most public school districts. No change was made. *Comment.* One commenter suggested that the 150 student load be increased to 160. *Response.* We rejected this suggestion for the reason immediately cited above. *Comment.* Another commenter recommended that we lower the student teaching load in

departmentalized classes from 150 to 120. *Response.* The Bureau disagreed. This would be in conflict with the 25:1 student/teacher ratio under § 36.11(a)(1). This paragraph has been redesignated as § 36.11(a)(3).

Comment.—Waiver for Staffing Ratios § 36.11(b)(4). Two commenters suggested changing the 30 days to 60 days before requiring a waiver for exceeding the staffing ratios. *Response.* The Bureau disagreed. The thirty-day time limit should be enough to indicate whether another teacher will be required or if a waiver will be necessary. *Comment.* Another commenter asked if the "30 days" means "total" or "consecutive". *Response.* The word "consecutive" was added after "30" to clarify the language. *Comment.* Two commenters recommended that the word "waiver" be removed and the phrase "an exception" be substituted. Both commenters also recommended that we add a paragraph (iii) which would require an additional teacher for 12 or more students. *Response.* The Bureau disagreed with the recommendation that we substitute the term "exception" for "waiver" since the term "waiver" has a more legal connotation. We also disagreed with the recommended additional requirement of 12 or more students for justifying a teacher. This could mean that if just one class enrollment is over by 12 students, an additional teacher would be required. This may represent a class scheduling problem. No changes were made. *Comment.* One commenter suggested that the waiver period should be for more than one year when the ratio exceeds five students. *Response.* The suggestion was rejected since the five or more students over the ratio could be in a class such as a shop or lab which requires safety as a top priority and where size is restricted. No change was made. *Comment.* Two commenters recommended changing the waiver approval level from the Director, OIEP to Agency Superintendent for Education. *Response.* The Bureau disagreed. We believe that a waiver approval should be at the highest possible level. The Agency level is too close to the level of request. *Comment.* One commenter recommended adding "through the Agency Superintendent for Education or Area Education Programs Administrator" after the word "Director". *Response.* The Bureau agreed with this recommendation, and this paragraph has been amended to include the provision. *Comment.* Five commenters questioned the possible lack of funding from ISEP to support the staffing ratios. *Response.* The Bureau is required by Pub. L. 95–561 to revise the ISEP formula once the standards have been published in final to allocate resources to meet the requirements set forth by these standards. This subsection has been redesignated as § 36.11(a)(4).

Comment.—Substitute Teacher § 36.11(b)(5). Three commenters expressed concern about the requirement of schools having to provide a state-certified substitute teacher and the requirement that a class cannot have a teacher in a classroom without teaching credentials for more than 30 school days. *Response.* The Bureau understands the problem that a certified substitute teacher may be hard to find in more isolated areas.

However, in order to maintain some level of instructional quality in the classroom, a high standard of control must be maintained. *Comment.* Two commenters recommended that we add the word "consecutive" after "(30)" and before the word "school" in this paragraph. *Response.* The Bureau disagreed with the recommendation that it add the word "consecutive" after "(30)" and before the word "school". However, the number "(30)" was changed to "20" to approximate the time span delineated if the word "consecutive" were used. The "20" school days further defines the requirement that a class not be without a certified teacher for in excess of a cumulative total of 20 instructional days during the school term.

Comment.—Waiver of Staff Requirements § 36.11(b)(6). Two commenters requested that, in this provision concerning waiver of staffing requirements, the word "waived" be removed and the word "excepted" added.

Response. Review of this paragraph indicated that the language is confusing and adds no meaningful information; therefore, this entire paragraph has been removed.

Comment.—Written School Enrollment and Attendance Boundaries § 36.11(c). One commenter agreed that written school enrollment and attendance policies are necessary.

Response. No change was necessary. However, § 36.11(c) has been redesignated § 36.11(b).

Comment.—Geographic Attendance Boundaries § 36.11(d). Sixteen comments were received concerning geographic attendance boundaries. One commenter asked how this requirement would fit within the existing policy under 25 CFR Part 32.4(i)—Choice of school. *Response.* No conflict exists since the Bureau is already required to insure that, under 25 CFR Part 32.4(i): ". . . consistent with the provisions of Indian Child Welfare Act of 1978, Pub. L. 95–608 (education close to home)" is part of the policy under choice of school. *Comment.* Four commenters recommended that full involvement and concurrence by the tribes affected be one criteria for setting attendance boundaries. *Response.* The Bureau agreed and believes that the second sentence in this paragraph takes care of the full involvement and concurrence by the tribes. No change was made. *Comment.* Two commenters were concerned about the quality of education that may be found outside one's attendance area and the possibility of excluding students from those options. *Response.* The final publication of academic standards should set the minimum level of basic education so that schools offering inferior educational programs will be minimized. *Comment.* One commenter suggested that attendance boundaries are appropriate only to day school operations, and, therefore, should only apply to day schools. *Response.* The Bureau disagreed. Boundaries for residential and off-reservation boarding schools are more urgently needed so that the student movement between schools can be minimized and practical program planning can be conducted realistically. *Comment.* Two commenters questioned whether the Bureau could dictate to parents the schools to which they could send their children. *Response.* Parents have the right to send their children to a Bureau, public, contract, or secular school if the children meet the admission requirements of the receiving school. (For some schools, this may mean payments for direct cost by parents.) Once the Bureau establishes regulations for attendance boundaries, students must meet all enrollment criteria, including the attendance boundary requirements. *Comment.* One commenter indicated that in 1980 attendance boundaries were established for schools in one area but were nullified by Pub. L. 95–561. *Response.* Under current Pub. L. 95–561 regulations, the authority to establish attendance boundaries is found at 25 CFR 32.4(i) and 39.20. Authority already exists without the proposed requirement under this section. *Comment.* Two commenters were concerned about certain traditional family attendance ties which have existed for generations to certain Bureau schools and the choice of parents to transport their children to a school farther from home if there is an elementary school closer to home. *Response.* The Bureau believes in local

community involvement and control; we further believe that the establishment of local school boundaries would foster local ties and strengthen community involvement. *Comment.* Three commenters were concerned about the enforcement of attendance boundaries and the penalty for failure to observe set boundaries. *Response.* The enforcement of attendance boundaries will be monitored by the Director, OIEP through the administration of the ISEP student count certification process. Violations of the student count certification process could result in nonpayment of ISEP funds for the affected students. This paragraph has been redesignated as § 36.11(c).

Section 36.12 Standard III—Program needs assessment.

Comments.—Program Planning and Implementation § 36.12. Ten comments were received regarding this section. Two commenters were in agreement with this section. Two commenters recommended removal of the section since some parts are included in §§ 36.10, 36.13, and 36.50. One commenter indicated that this section was far too vague and the school board role needed to be clearly identified. Two commenters suggested that Pub. L. 95–561 mandated that a "Comprehensive Educational Plan" be included in this section. Another commenter suggested that we delete § 36.12(a) and correct the differences between §§ 36.10 and 36.12 with regard to needs assessments and educational objectives. Two commenters recommended that § 36.12(d) should also include future job needs, college entrance requirements, tribal priorities, etc. *Response.* After review, we have rewritten this section to agree with some of the comments. The heading "Program planning and implementation" has been revised to read "Program planning and implementation" has been revised to read "Program needs assessment" to further clarify the language of this section. Paragraph (a) under this section has been removed. Amendments in (c) and (d) of this paragraph eliminated the redundant language under §§ 36.10, 36.13, and 36.50. Subsection (b) has been redesignated (a) and the last sentence was deleted. Subsection (c) and (d) have been redesignated as (b) and (c) and a new (d) was added.

Section 36.13. Standard IV—Curriculum development.

Comment.—Involvement of Non-certified Staff Members § 36.13(a). Two commenters expressed concern over the term "certified" and suggested the addition of non-professional staff and members of the local Indian community.

Response. The Bureau agreed with the commenters, and this paragraph has been modified to include non-professional staff and the members of the local community.

Comment.—Involvement of Staff and the Tribal Community § 36.13(c). Three commenters expressed concern regarding the active participation of off-reservation school boards, elders, and concerned individuals in curriculum development. In addition, each school should provide evidence of active involvement by the community.

Response. The word "should" in the first line of this paragraph has been replaced by the word "shall" and provides for tribal involvement. This should provide the necessary involvement for compliance.

Subpart C—Minimum Program of Instruction

Section 36.20 Standard V—Minimum academic program/school calendar.

Comment.—Minimum Academic Program § 36.20(a). One commenter suggested that Agencies with Kindergarten through 12 schools coordinate the schools' curricula. Another commenter suggested that tribal representatives be added to the Agency and Area Offices for approval of each school's alternative ways of meeting the minimum academic program requirements.

Response. The concern for coordination of schools' curricula is addressed in § 36.24(d), in which the high schools are directed to coordinate their programs with feeder schools (elementary, junior high and middle schools). Regarding the second concern, school boards represent the tribes in approving instructional and alternative methods for meeting the minimum academic program. No change was made.

Comment.—Length of School Term § 36.20(b). Twelve comments were received on this paragraph. One commenter recommended that the length of the school term be increased from 180 days to 200–220 days and the length of instructional day be lengthened from 5.5 hours to 7.0 hours for high schools, with the lower grades increased appropriately. Six commenters suggested that the school term should be set at 175 instructional days or comply with the state minimum requirements. Three commenters suggested that inservice time should be included in the 180-day school term and should not be in addition thereto. One commenter asked if a school could make up a lost day of instruction. Another commenter questioned the 5.5 instructional hours per day for high school and believed that to be unreasonable.

Response. Extending the school term to 200–220 days is unrealistic at this time since not enough research has been conducted to ascertain its value. The suggested 175-day school term has been rejected. Compliance with state minimum requirements is covered by § 36.61. The 180-day school term reflects the average of most of the states. (Many states are working to increase the length of their school terms.) However, when a state surpasses the 180-day school term, each school in that state will be required to accept the longer school term. Policies concerning inservice time will be addressed with the review of the personnel standards. Inservice time will not be included in the 180-day school term. Any loss of instructional days will have to be made up; we believe that direct instructional time is too important for students to lose. The 5.5 instructional hours per day requirement for high schools reflects at least the average of most state instructional hour per day requirements. The scheduling of instructional time can be done in a number of ways to accomplish the required time per day. However, to clarify and eliminate the confusion regarding what constitutes instructional hours per school term, we have removed the number of total hours.

Comment.—Definition of School Day § 36.20(c). Three commenters recommended that this paragraph be either defined under §36.3(oo) or rewritten. One of the commenters suggested that the day should be counted as a school day if three-fourths (¾) of the daily instructional hours are met. In addition, it was stated that teacher contracts will have to be modified if the school term has to be extended.

Response. This paragraph has been amended to include the requirement that an instructional school day may be counted if three-fourths (¾) of the daily instructional hours are met. Administrative provisions for contract modification are available to allow for additional days.

Comment.—State-mandated courses § 36.20(d). One commenter suggested that state and/or tribal waiver be included in this paragaph. Four commenters suggested including under this paragraph a provision for inservice days as part of the 180-day school term.

Response. After a close review of this paragraph, it has been determined that since Bureau-operated schools are not

under state jurisdiction and tribal waivers are covered under §§ 36.2 and 36.61, this paragraph was removed. The suggestion regarding inservice time was rejected since the inservice days will be reviewed and addressed under personnel regulations (25 CFR Part 38). Further, it would diminish the instructional time these standards are attempting to emphasize. However, §§ 36.23(d) and 36.24(e) have been moved to this section and redesignated as § 36.20(d). Section 36.24(h) has been moved to this section and redesignated as §36.20(e).

Section 36.21 Standard VI—Kindergarten instructional program.

Comment.—General § 36.21. One commenter fully agreed with this section. However, it was suggested that the word "content" be added to the heading of this section.

Response. No change was made; adding the word "content" would not provide any further clarification.

Comment.—Language and Kindergarten Curriculum § 36.21(a). Two comments were received. One commenter asked why native language was being deemphasized in this paragraph. Another commenter suggested that this paragraph include certification of kindergarten teachers to include at least one course in early childhood education.

Response: The Bureau agreed with the first commenter, and § 36.21(a) has been amended to include the phrase "native language where necessary". The Bureau did not agree with the second commenter in that the course requirements for certification of kindergarten teachers should be included under this paragraph since this section addresses only the academic instructional program. We agreed that such course requirements are needed and they will be included in the personnel regulations when they are revised.

Comment.—Health Education § 36.21(b)(5). Three commenters reinforced the importance of requiring substance abuse education beginning at the kindergarten level. One of the commenters suggested that the ISEP formula be adjusted to guranteee that funding is available to carry out the requirements of the standards.

Response. The support for this paragraph requires no elaboration. As to the concern regarding adequate funding to support the substance abuse program, the allocation of funding will be addressed in the revised ISEP formula. However, the reference made to the BIAM criteria was removed since it is an internal document.

Section 36.22 Standard VII—Elementary instructional program.

Comment.—Elementary Instructional Program § 36.22. Thirteen comments were received. Eight commenters reacted to the specifications and prescriptive details after each content area as being too restrictive. Two commenters supported this section. One commenter suggested the inclusion of computer awareness. One commenter recommended requiring metric education when required by a state in which the school is located. Another commenter recommended that a separate section be established for bilingual instruction.

Response. The Bureau agreed with the comments that the prescriptive details after each content area are too restrictive. Therefore, for consistency and style, the specifications have been removed and the section reformatted. The Bureau agreed with the suggestion regarding inclusion of computer awareness; this has been included under § 36.22(b)(5) and termed "computer literacy". We disagreed with the commenter suggesting the establishment of a separate section for bilingual education. Establishment of bilingual instruction should be left up to local community needs.

Section 36.23 Standard VIII—Junior high/middle school instructional program.

Comment.—Junior High Instructional Program § 36.23. Three commenters addressed this section and suggested some general concerns. One commenter recommended provisions for bilingual education under this part. One commenter expressed concern about the availability of funds to provide the instructional program content under this section. Another commenter expressed support for the beneficial aspects of this section.

Response. Provisions for bilingual education have been rejected. Establishment of bilingual instruction should be left up to local community needs. No change was made.

Amended.—Instructional Program § 36.23(a). No comments were received for this paragraph. However, this paragraph has been amended by removing the word "nature" and the words "wherever possible". The paragraph now reads: "The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows."

Comment.—Language Arts § 36.23(b)(1). Two comments were received. One commenter suggested the addition of one-half unit of native language arts. Another commenter was concerned that reading, writing, and public speaking should receive some attention.

Response. The Bureau believes that any specific subject-matter content area should be left to the local school and school board since the specific course requirements should reflect the needs of the students. Paragraph (b) of § 36.23 was amended for clarification.

Amended.—Social Studies § 36.23(b)(2). No comments were received regarding this paragraph, but the first two sentences of this paragraph have been removed to add maximum flexibility and to conform with the other instructional program requirement sections.

Comment.—Science § 36.23(b)(4). One commenter suggested emphasizing the value of cultural diversity and recognizing the intrinsic worth of each culture in the area of science.

Response. Again, the Bureau believes that the instructional content areas should be left up to the local school board based on the needs of the students. No change was made.

Comment.—Exploratory and Elective Areas § 36.23(b)(7). Two comments were received. One commenter suggested that "practical arts" also be included in this heading. Another commenter questioned whether this paragraph was required or if schools had an option to offer electives.

Response. The Bureau agreed with the first commenter, and § 36.23(b)(5) has been amended to include "and practical arts". The first sentence has been removed to conform with the revised style. In regard to the second commenter, we believe that since "other exploratory and elective areas" does not indicate a "basic instructional requirement", it has been removed to avoid any confusion.

Comment.—Integration of Content Areas Into the Curriculum § 36.23(c). Two comments were received. One commenter suggested that metric education should be included to some degree in the math and science program content areas. Another commenter expressed the vital importance of the inclusion of the alcohol and drug abuse requirements contained in 62 BIAM 5.4A. One of the commenters questioned the use of the BIA manual as a reference in the regulations.

Response. The Bureau agreed with both commenters. However, it is our belief that the metric education content

should be integrated into the entire instructional program, not just math and science. This paragraph was amended to include "career exploration and orientation". Also, this paragraph was amended by removing the subject matter areas after health education but adding the phrase "includes meeting the requirements contained in 24 Stat. 69 and removing the BIAM reference.

Comment.—Multi-culture and Multi-ethnic Dimensions in Courses § 36.23(d). One commenter suggested that we use less vague terms in place of "offer" and "dimensions".

Response. The Bureau disagreed with the suggestion since the words "offer" and "dimensions" are understood terms in the context of this paragraph. However, we have moved this paragraph to § 36.20 and redesignated it as § 36.20(d) since it reflects more of a policy statement than a standard.

Comment.—Language other than English § 36.23(e). One commenter expressed concern that we were not emphasizing native language.

Response. The Bureau believes that this paragraph includes all non-English languages, of which a native language could be one. Again, program content is being left to the needs of the students and local school boards. No change was made; however, this paragraph has been redesignated as § 36.23(d).

Comment.—Health and Safety Standards § 36.23(f). One commenter suggested that we include, in addition to health and safety standards, the words "and tribal cultural taboos". Another commenter suggested that we include a new paragraph (g) "computer science" under this section.

Response. The Bureau disagreed with the first commenter. This paragraph pertains only to health and safety standards. No change was made. With regard to the computer science suggestion, the Bureau has included a unit requirement in computer literacy in the junior high/middle school instructional program under § 36.23(b)(6). This paragraph has been redesignated as § 36.23(e).

§ 36.24 Standard IX—Secondary instructional program.

General Comment. One commenter agreed with this entire section.

Comment.—School Philosophy § 36.24(a). One commenter suggested that the tribes' education philosophies be included in this paragraph.

Response. The Bureau agreed with the commenter's suggestion, and this paragraph has been amended to include the tribes' philosophies.

Amended.—Fine Arts § 36.24(b)(5). No comments were received. However, the words "practical arts" have been added to this paragraph to provide for a balanced curriculum offering.

Comment.—Language Courses § 36.24(b)(7). Three comments were received. Two commenters addressed the impracticality of offering courses in languages other than English, and one commenter addressed the cost of hiring language teachers on a small school budget.

Response. The Bureau, based on its review of some of the latest developments in state curriculum revisions, believes that many states will be requiring courses in languages other than English. Therefore, we do not see offering a language course other than English as impractical. The special problems in small school budgets will be addressed in the ISEP revision. No change was made.

Comment.—Vocational Education § 36.24(b)(9). One commenter suggested that emphasis in this paragraph should also include the design of a curriculum which directly relates to the actual trends of occupations.

Response. The Bureau agreed with the suggestion, and this paragraph has been amended to include actual trends of national, regional, and local occupations.

Comment.—Computer Science § 36.24(b)(9)(i)(ii). A commenter recommended that computer science be included as part of the vocational educational program for grades Kindergarten through 12.

Response. The Bureau disagreed with the commenter that computer science should be included in the vocational educational program. However, we did agree that computer literacy should be taught and therefore is included in the elementary and middle school grades. Bureau high schools will adhere to state standards for computer science requirements.

Comment.—Integration of Content Areas § 36.24(c). Five comments were received. One commenter suggested that home economics be included as a required content area. One commenter suggested including consumer rights and responsibilities. One commenter suggested requiring sex education and birth control. One commenter addressed the need for adequate funding for alcohol and drug abuse under ISEP. Another commenter recommended adding computer science under this paragraph.

Response. The Bureau disagreed with making home economics a required content area since we believe it is adequately covered under practical arts. Regarding comments concerning consumer rights asnd responsibilities, sex education, and birth control, we feel that such specific content areas should be at the discretion of the school officials and school boards. However, these content areas are usually covered by several different subject-matter areas. The adequate funding for alcohol and drug abuse under ISEP will be addressed when the formula is revised to meet the cost of education. Computer science was not included under this paragraph; it will be required by Bureau schools in those states where it is a requirement. This paragraph was also amended by removing most of the sentence after the words "health education" and retaining only the statutory requirements contained in 24 Stat. 69.

Redesignated.—Multi-culture and Multi-ethnic Dimensions § 36.24(e). No comments were received. However, this paragraph has been redesignated as § 36.20(d) since the provision will be applied to all instructional programs.

Comment.—Class Schedule § 36.24(f). Two commenters recommended that this paragraph be removed.

Response. The Bureau disagreed. Ensuring that every student's graduation requirements are met by the school is a major responsibility of a school in its yearly class scheduling. Paragraph (f) of § 36.34 is redesignated as § 36.34(e).

Comment.—Health and Safety Standards § 36.24(g). One commenter suggested that this paragraph be amended to include facilities standards to comply with § 503 of the Rehabilitation Act.

Response. The Bureau will soon undertake the development of standards for facilities, and the requirements of § 503 will be addressed at that time. Paragraph (g) of § 36.24 is redesignated as § 36.24(f).

Comment.—Intraschool Programs § 36.24(h). Two commenters recommended that § 36.24(h) be removed from this section and added to § 36.20.

Response. The Bureau agreed with the recommendation and, since the provision applies to all instructional programs, § 36.24(h) has been redesignated as § 36.20(e).

Subpart D—Student Instructional Evaluation

Section 36.30 Standard X—Grading requirements.

General Comment. One commenter agreed with § 36.30 Standard X—Grading requirements.

Comment.—Grading Requirements § 36.30(a). Ten comments were received. Eight commenters suggested removing

the words "explicit competency" since the words would be confusing to principals. One commenter was in favor of consistent standards. One commenter asked whether the mastery of course objectives would be uniform or if they could be decided locally.

Response. The Bureau agreed with removing the words "explicit competency" in § 36.30(a), and the second sentence was amended to provide clarification of the first sentence. In responding to the question about course objectives, the Bureau believes that the prescribed course objectives should be developed locally by the local school board and school officials. This requirement expects that every school subject area shall have a minimum level of mastery.

Comment.—Report Cards § 36.30(d). Thirteen comments were received. Two commenters recommended that report cards be issued to students of legal age. Eight commenters questioned the clerical work involved in issuing report cards and written academic evaluations for each student. Two commenters recommended removing this paragraph. One commenter suggested eliminating the request for parent signature.

Response. The Bureau agreed to amend this paragraph to include a provision for those students of legal age and to remove the requirement for a written student academic evaluation as being too excessive. However, the Bureau believes that report cards should be issued on a regular basis and not less than four (4) times yearly. It also believes that a parent and/or student of legal age should be required to review a report card and attest by signature that he/she has reviewed it. In addition, conference request was removed and student attendance record was added.

Section 36.31 Standard XI—Student promotion requirements.

Comments.—Promotion Policy and Requirements § 36.31(a) (1), (2), (3). Nineteen comments were received. Several comments recommended that this paragraph be completely rewritten; several other commenters suggested that teachers were not capable of developing criterion-referenced tests. Another group of commenters suggested that promotion policies should be set by local school boards; another group recommended that individual student needs, abilities, and teachers should play a major role in the evaluation process; and some commenters questioned if the mastery level meant meeting 100 percent of the course objective. Some commenters thought this paragraph was more of a retention requirement rather than a promotion standards. Another group addressed the issue of teacher written recommendations attesting to each student's mastery of the instructional objectives as being too large of a task with which to comply.

Response. The Bureau agreed with many of the comments, and this paragraph has been amended to reflect some of the recommendations. The revised paragraph eliminates some troublesome terms such as "competency" and the sentence on "demonstrate mastery". This section has also been revised and paragraph (a)(3) has been totally removed because of excessive paperwork. We agreed that for each teacher to provide a written recommendation for each student's instructional objectives would be very time consuming. This paragraph provides for each school to establish and implement a promotion policy with three minimum requirements: (a) A minimum criteria for student promotion based on a mastery of instructional objectives; (b) criterion-referenced tests to be utilized in measuring performance; and (c) a requirement that a student be in attendance or be provided educational services for 160 instructional days for promotion.

Comment.—Grounds for Rentention § 36.31(a)(4). Eleven comments were received. The commenters objected to the strict 160 instructional day requirement without some form of relief. Some commenters questioned the rationale for using 160 days per academic year. Other commenters suggested having the instructional day requirement correspond with the state public school systems. Another commenter asked if the special education exemption would still apply.

Response. The Bureau agreed with some of the comments, and this paragraph has been rewritten to include excused absences. A provision is included for a school board or school committee to review special mitigating circumstances. The 160-day requirement is based on selected school absenteeism policies, and we selected the highest rate of most of the schools reviewed. The Bureau believes that a minimum number of instuctional days should be set for all Bureau schools; however, this does not preclude school boards from adopting a local public school policy higher than the Bureau's standards. Special education exemptions as required by Pub. L. 94-142 shall still apply when adhering to these standards. Paragraph (a)(4) of § 36.31 has been redesignated as § 36.31(c).

Section 36.32 Standard XII—Graduation requirements for a high school diploma.

General Comment. Three comments of a general nature were received on graduation requirements. One commenter asked if Upward Bound credits could be considered extension study for meeting the graduation requirements under § 36.32. Two commenters asked how the FY 1984 freshmen would be affected by this and § 36.2(e). *Response.* Any course taken for credit that will be accepted as meeting graduation requirements shall be from a state-sanctioned institution and approved by the local school board prior to the course being taken. Section 36.32 and paragraph (e) of § 36.2 will not affect FY 1984 freshmen since graduation requirements must be established prior to the beginning of the school term. *Comment.* Two commenters suggested adding a foreign language course. Two other commenters recommended adding one unit in computer science. Another commenter suggested a need for sex education. *Response.* The Bureau rejected the addition of a foreign language requirement. The inclusion of a foreign or native language should be at the discretion of the local school officials. Requirements for computer science will follow state standards in the state where the school is located. As to sex education, the Bureau believes that the subject is adequately covered in other related subject areas, and it also should be relative to community needs.

Comment.—Units Required for Graduation § 36.32(b). Three commenters recommended that when state graduation requirements exceed the Bureau's standards, the state's standards should apply.

Response.—The Bureau agreed with the recommendation, and after the word "program" and before the semi-colon (;) we have inserted the phrase "unless the state in which the school is located exceeds these requirements, then the state's requirements shall apply." This paragraph has been amended.

Comment.—Math Requirements § 36.32(b)(2). Five commenters stated that the proposed requirement of three units of math will place a burden on high schools and that the math requirement should be lowered to two units.

Response.—No change has been made. The Bureau believes that within a few years most states will increase their math requirements to at least three units and in some cases more. With the increase of high technology in our

society, the Bureau believes that more math skills will be required for successful living.

Comment.—Social Studies § 36.32(b)(3). Two commenters recommended that the units required in tribal history and Indian studies be dropped because of teacher certification. Another commenter suggested that the one-half unit required in Tribal history/government should be increased to one unit.

Response.—The Bureau disagreed with the first two commenters since Pub. L. 95–561 § 1131(c)(1)(B) provides a waiver expressly for teachers of native American Indian language and cultural studies from state certification. The Bureau disagreed with the second commenter since tribal history and government are partially taught in the state history courses and no change was made.

Comment.—Science § 36.32(b)(4). One commenter questioned the need for two (2) units of science. Another commenter suggested that § 36.32(b)(4)(i) needed clarification because as proposed, paragraph (b)(4)(i) indicates that one (1) unit each is required in chemistry, physics, biology, and zoology and that one (1) unit is anatomy could replace all of these.

Response.—The Bureau believes that at least two (2) units of science must be required if students are to stay abreast with and understand the changing world. However, the Bureau agreed with the second commenter and paragraph (b)(4)(i) has been amended to avoid confusion.

Comment.—Physical Education § 36.32(b)(5). Six comments were received. Five commenters questioned the need for the Agency Superintendent for Education and/or Area Education Programs Administrator to authorize exemption for special handicapping conditions. One commenter opposed this paragraph as being in direct oppostion to the requirements of Pub. L. 94–142.

Response.—The Bureau, after reviewing the Pub. L. 94–142 requirement, agreed with the one commenter, and the exemption requirement has been removed. The Bureau agreed that each handicapped student must be afforded a regular physical education program, and this requirement will be covered by the special education regulations currently being developed for publication. This paragraph has been amended by removing the exception section.

Comment.—Fine Arts § 36.32(b)(7). Two commenters recommended that fine arts should be an elective rather than a requirement.

Response.—No change has been made. The Bureau believes that at least one unit in fine arts should be required so that students are exposed to the general subject content area.

Removed.—Substitute Courses § 36.32(e) has been removed. This subsection was deleted so that wholesale substitution of courses would be avoided. However, substitute courses shall adhere to state and Bureau regulations.

Comment.—Certificate of Achievement § 36.32(f). Three commenters took issue with providing a special "certificate of achievement" for special education students.

Response. The Bureau, after careful review, agreed with the commenters and, believing that these standards should not discriminate based on handicapped conditions, this paragraph is removed.

Comment.—State Proficiency Examinations § 36.32(g). One commenter questioned how the Bureau schools could authorize and/or endorse state proficiency examinations for their students.

Response. No change has been made. Many Bureau schools are already requiring their students to pass state proficiency examinations and, therefore, the Bureau believes that students passing such examinations should be recognized. Paragraph (g) of § 36.32 is redesignated as § 36.32(e).

Subpart E—Instructional Support

Section 36.40 Standard XIII—Library/media program.

General Comments. One commenter thought this section on the library/media program benefits small schools. Another commenter expressed concern for the financial hardship of small schools hiring librarians. Another commenter suggested that library/media services be separated as between elementary and secondary program requirements. *Response.* Under Pub. L. 95–561, the Bureau is required to revise the ISEP formula to reflect the cost of education based on the establishment of the final standards. The revision of the ISEP formula will address the allocation of funding for needed personnel in small schools. The Bureau disagreed with the suggestion that elementary and secondary requirements should be separated. This effort would only result in redundant language and would serve no further clarification purpose.

Comment.—Minimum Library/Media Program § 36.40(a). One commenter objected to Bureau-operated schools being required to meet state and/or regional standards for school libraries. The commenter believed that these standards were designed to meet urban school systems and the standards were "frills".

Response. The Bureau disagreed with the commenter. The Bureau believes that a strong library/media program is essential for a good educational program and that a minimum library/media program must be established for students to explore the world around them, especially when they are isolated from the mainstream of society. No change was made.

Comment.—Library Committee § 36.40(a)(2). One commenter recommended that a library committee should have the responsibility for the development of the library policy.

Response. The Bureau agreed with the comment, and paragraph (a)(2) of § 36.40 has been amended to include the recommendation that a library committee will develop the library policy subject to board approval.

Comment. Book Ratios § 36.40(a)(2)(i). Two commenters thought that schools have insufficient funds to comply with these book ratios. Another commenter asked why there should be a larger number of books for the lower grades than the upper grades.

Response. The allocation of funding for book ratios will address the revision of the ISEP formula as required by Pub. L. 95–561. Usually, the books for the lower grades are smaller and more pictorial in nature, thus requiring a larger selection. No changes were made. However, the Bureau has included another sentence under this paragraph to provide that materials pertaining to Indian Tribes and Alaskan Natives be integrated within the basic collections.

Comment.—Reference Books § 36.40(a)(2)(ii). One commenter objected to being required to have copies of principal textbooks in the library.

Response. The Bureau believes that copies of principal textbooks should be available in the library for student use and as reference books for further study required by other related courses being taught. This is current practice for most libraries. No change was made.

Comment.—Periodical Collection § 36.40(a)(2)(iii). Three comments were received under this paragraph. One commenter asked if newspapers were included as periodicals. Two other commenters addressed the lack of funds for meeting this requirement.

Response. Newspapers are included in the count of periodicals. The revision of the ISEP formula will address the allocation of funds for the periodical

collection requirements. No change was made.

Comment.—Library Media Center § 36.40(a)(3). Five comments were received. One commenter agreed with this standard as proposed. A second commenter said that the librarian ratios were too high to meet the special educational needs of Indian students. Three commenters addressed the cost of the staffing requirements.

Response. The Bureau, in reviewing the ratios for librarians, has amended the ADM categories for 101 to 200 and 201 to 400 to read: "101 to 200—⅓ time librarian and ½ time library aide or 20 hours of library activity; 201 to 400—1 full-time librarian or ⅔ librarian provided the school has a full-time library aide." The resources to meet these standards should be adequate.

Comment.—Inventory of Books and Materials § 36.40(a)(4). Two commenters recommended removing this paragraph since this would mean delays and would interfere with the operation of a school.

Response. To some extent, the Bureau agreed with the commenters. However, the Bureau believes that schools must be accountable for their libraries. This paragraph was amended to include an annual inventory in accordance with the acquisition and selection policies of the school.

Comment.— Equitable Distribution of Instructional Materials § 36.40(b). Two commenters recommended that this paragraph be redesignated as § 36.41(c).

Response. The Bureau agreed with the commenters, and this paragraph has been redesignated as § 36.41(c).

Section 36.41 Standard XIV—Textbooks.

Comment.—Textbook Review Committee § 36.41(a). Five comments were received. Three commenters suggested that the textbook review committee include the local school board, which will have final approval of the textbook selection. Two commenters recommended that the state-adopted textbook list should also be approved for Bureau schools. Another commenter questioned the legality of textbook committees.

Response. The Bureau agreed with the comments that would enable the school board to be included on the textbook review committee. Any school board member(s) may sit on the review committee since the school board sets policy. This paragraph has been amended to provide school board approval in the appointment of individuals to the school textbook review committees. We disagreed with a blanket approval of accepting a state-adopted textbook list since the needs of Indian students will vary with the needs of their own community. We do not believe this paragraph creates any legal problems.

Comment.—Congruency Between Textbooks § 36.41(b)(2). One commenter suggested that the word "congruency" be replaced by the word "coincide" and the word "program" be replaced by the words "grade level(s)".

Response. The Bureau agreed. In fact, we believe that § 36.41(b)(1) addresses the same issue and therefore this paragraph has been removed.

Comment.—Stereotypes in Textbooks § 36.41(b)(3). One commenter suggested removing the phrase "and avoid stereotypes" from this paragraph.

Response. The Bureau agreed with the suggestion, and the phrase was removed. This paragraph has been redesignated as § 36.41(b)(2).

Comment.—Updating of Textbooks § 36.41(b)(4). Thirteen commenters objected to the requirement that textbooks be current or published within five (5) years.

Response. The Bureau agreed with the commenters that the five (5) year publication requirement was too rigid. However, the requirement for current textbooks was retained. Paragraph (b)(4) of § 36.41 has been redesignated as § 36.41(b)(3). A paragraph (c) was added by moving § 36.40(b) and redesignating it as § 36.41(c).

Section 36.42 Standard XV—Counseling services.

General Comments. Two comments were received. One commenter pointed out the benefits this section will have for small schools. Another commenter expressed the importance of informing parents and students of the levels of performance by student and ways in which to correct any deficiencies.

Comment.—School-wide Testing § 36.42(a). Five comments were received. One commenter questioned the wording of this paragraph and suggested the proposed definition of "regular program students" in § 36.3(ii) would eliminate some students from being tested. One commenter questioned testing first graders. Two commenters stated that the testing program should not be included in the counseling program. Another commenter suggested moving this paragraph under § 36.30—Grading requirements.

Response. The definition of "regular program students", § 36.3(ii), has been changed to state that special education students will first be considered as regular students. Therefore, all students will be tested. Section 36.3(ii) has been redesignated as § 36.3(pp). Regarding testing first graders, the Bureau has amended the requirement by allowing the first graders to be tested where appropriate. The Bureau disagreed with the commenters that suggested moving the testing program from the academic counseling program. Usually, the testing is conducted by the academic counseling program personnel since they are dependent on test scores to properly provide counseling services. The Bureau also disagreed with the comment to redesignate this paragraph under § 36.30. Section 36.30 pertains to how one assigns grades, and § 36.42 is concerned with the way one is tested.

Removed.—Minimum Competency Tests § 36.42(a)(1). This paragraph was removed since it tends to confuse and duplicate § 36.31(a)(2).

Comment.—Scheduling of Standardized Tests § 36.42(a)(2). Thirteen commenters reacted to the October and April time frame for giving standardized achievement tests. Seven of the commenters recommended that we use a September and May schedule so that students are tested on a nine-month span rather than a six to seven-month span. Three of the commenters also suggested a once-a-year testing schedule. A few of the commenters questioned the cost of giving standardized tests, and one commenter stated that testing was more of an intimidation than a help for schools. Another commenter was concerned about the evaluation of subject areas other than reading, language arts, and mathematics.

Response. The Bureau agreed with the suggestion that the October and April testing dates should be changed to September and May or adhere to the norming dates of the test being given and this amendment was made. However, the Bureau disagreed with the once-a-year testing suggestion; we believe that both pre-tests and post-tests are necessary to provide an assessment that can be correlated to normed test instruments for comparative purposes. The Bureau agreed that testing will result in cost, but we believe that the importance of the data provided by testing far outweighs the cost. Furthermore, schools should view tests as a tool for improving the educational process rather than as intimidation. As to the evaluation of other subject matter, this is covered in § 36.50. Paragraph (a)(2) of § 36.42 has been redesignated as § 36.42(a)(1).

Amended.—Reporting Test Results § 36.42(a)(3). This paragraph has been amended by inserting the word "summative" after the word "the" and before the word "results," in the first sentence and adding the following

phrase and sentence "the appropriate Agency and/or Area and respective school boards. Parents will be informed of test results for each of their children." Paragraph (a)(3) of § 36.42 is redesignated as § 36.42(a)(2) and paragraph (a)(4) is redesignated as (a)(3).

Comment.—Counselor/Student Ratio § 36.42(b)(1). Three comments were received. Two commenters suggested lowering the minimum ADM of 200 students to 100 ADM for each full-time professional counselor. Another commenter recommended that the ADM requirement be increased to 300 ADM.

Response. No change was made. The Bureau believes that, based on some of the ratios found in other state, private and Federal programs, the 200 ADM requirement would be adequate for a minimum standard.

Comment.—Counselors in a Bicultural of Multi-cultural Setting § 36.42(b)(2). One commenter recommended that the words "in a bicultural" or "multicultural setting" be removed since the phrases add nothing to the intent of the standard and are subject to misinterpretation.

Response. The Bureau agreed with the recommendation and the phrases were removed.

Comment.—Counseling Assistance to Students § 36.42(b)(3)(vi). Five comments were received. The commenters addressed the unrealistic requirements for having counselors at the seventh grade. Some commenters recommended that the words "junior high or middle school" be removed. Another commenter suggested that we strengthen this paragraph to require counselors to provide students and families with college and financial aid counseling.

Response. The Bureau disagreed with the commenters. We believe that it is essential to provide academic and career planning at an early age. This enables students an early opportunity to advance toward a career goal. The proposed regulation in this section does require counseling for college and financial aid assistance. The Bureau also believes that the requirements stated here are not unrealistic and must be performed to develop a good counseling program. No change was made.

Section 36.43 Standard XVI—Student activities.

Comment.—Student Activity Program § 36.43. One commenter noticed that the second sentence is a "run-on" sentence beginning with "These programs . . ."

Response. The Bureau agreed, and the beginning of the sentence has been changed to read "Each activity program. . ."

Comment.—School Board Approval of Student Activities § 36.43(a). Five commenters recommended that all student activities should be approved by the school supervisor and the school board should approve the overall activity plans.

Response. The Bureau agreed with the recommendation, and this paragraph has been amended as recommended to include school board approval for the overall activity plan.

Comment.—Student Activity Plan § 36.43(b). Three comments was received. One commenter recommended that this paragraph be removed since it created more paperwork. Two commenters suggested that we should state to whom the plan should be submitted.

Response. The Bureau disagreed with removing this paragraph since each student activity should be authorized and approved prior to any student participation. However, the Bureau did agree with the suggestion that we specify to whom the plan should be submitted. This paragraph has been amended.

Comment.—Interscholastic Sports and Activities § 36.43(c). Two commenters did not agree that Bureau schools should abide by state rules when participating in state-recognized leagues. The commenters also recommended that this paragraph should read "belong to" rather than "participate in".

Response. The Bureau is not requiring schools to participate in state-recognized leagues. However, when a school does, it should follow and abide by state regulations. Participation is the choice of each school. No change was made.

Comment.—Participation in Interscholastic Competition § 36.43(d). One commenter wrote that this paragraph implies that there is an indefinite period of time in which "comparable competitive opportunities are not required to be provided to all students regradless of sex," and that this paragraph should be removed.

Response. The Bureau disagreed. This paragraph provides for both sexes to participate in interscholastic competition in noncontact sports until comparable sports activities are provided. There is the possibility that there could be an indefinite period of time in which comparable competitive opportunities cannot be offered. However, if comparable interscholastic activities are not offered, both sexes may participate. No change was made.

Comment.—Intramural Program for Residential Students § 36.43(e). One commenter suggested that the term "formal" should be removed and the words "its resident" should be changed to "all" in the phrase "formal intramural programs for its resident students."

Response. The Bureau agreed with the suggestion, and this paragraph has been amended accordingly.

Comment.—Student Activities Must be Education Related § 36.43(f). Two commenters requested that this paragraph be clarified, since the commenters consider many activities such as recreation programs to be related to the educational program.

Response. The Bureau included this paragraph so that all student activities would be related to the school educational program and/or outside activities would be sanctioned. However, the Bureau has amended this paragraph to provide further clarification.

Comment.—Auditing of Student Activity Accounts § 36.43(g). One commenter suggested that the term "audited" be changed to "monitored" since "audit" has specific, legal connotations requiring a qualified financial auditor.

Response. The Bureau disagreed with the suggestion. The Bureau has a regulation in 25 CFR 31.7 which requires that student activity bank accounts be audited. No change was made.

Comment.—Safety and Welfare of Students Participating in School Activities § 36.43(h). One commenter suggested that this paragraph should include "spectators" under its safety requirements.

Response. The Bureau disagreed. The requirements here pertain only to the safety and welfare of students participating in a school-sponsored activity. No change was made.

Subpart F—Evaluation of Educational Standards

Section 36.50 Standard XVII—School program evaluation and needs assessment.

General Comment. Two comments were received. One commenter suggested that this subpart should address accreditation of the whole school program under the appropriate accreditation association within that region. Another commenter expressed concern regarding the extensive provision for conducting evaluations and needs assessments by the Office of Indian Education Programs and local schools. *Response.* The Bureau believes that accreditation should be left up to

the local school board and school officials. However, schools shall follow regional and/or state or accreditation requirements equal to the state in which a school is located. The Bureau agreed that conducting evaluations and needs assessments are time-consuming but essential. Schools need to provide a systematic review of their programs and address the needs of their students.

Comment.—Evaluation Cycle § 36.50. Eight comments were received. The commenters addressed the four-year evaluation cycle in the introductory part of this section as conflicting with state, tribal, or regional accreditation, and suggestions were made to increase the evaluation cycle to seven years. Commenters also recommended that schools following regional accreditation continue to follow that procedure and evaluation cycle.

Response. The Bureau agreed with the commenters, and this introductory paragraph has been amended to increase the four-year evaluaton cycle to seven years and add the option that a school may elect to follow its own state or regional accreditation requirements or accreditation requirements at least equal to the state in which the school is located.

Comment.—Areas of Evaluation § 36.50(a). Three comments were received. Two comments suggested the inclusion of "standardized test results" and "professional staff development" as relevant requirements within the listing under this paragraph. Another commenter recommended that the areas to be reviewed be categorized under process and product evaluation.

Response. The Bureau disagreed that "standardized test results" should be required under this paragraph since test results are required under § 36.42(a). However, the Bureau does agree that "professional staff development" should be included, and § 36.50(a)(16) has been amended to include certification. The Bureau disagreed with the second commenter that a process and product evaluation be include under this paragraph. The methodology for process and product evaluation should be determined by what is to be evaluated.

Comment.—Standardized Needs Assessment and Evaluation § 36.50(b). Five comments were received. One commenter suggested that this paragraph be removed. Four commenters suggested this paragraph be amended to consider providing guidelines for developing appropriate evaluation models for schools.

Response. The Bureau disagreed with the first commenter since evaluation is a critical part in the assessment of school programs. However,the Bureau agreed with the suggestion that guidelines be provided instead of having one evaluation model. This paragraph has been amended to include the provision of guidelines for developing appropriate models for evaluating the requirements of the standards under this section.

Section 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

General Comment. Two general comments were received. One commenter agreed with monitoring requirements and addressed their importance. The other commenter felt that the monitoring section was not strong enough.

Response. The Bureau believes that monitoring is an administrative tool that provides data to management to help support and assist in the delivery of services. The results of monitoring will be used to evaluate management in meeting its performance objectives.

Comment.—Onsite Monitoring by Central Office § 36.51(a). One commenter questioned the adequacy of Office of Indian Education Programs personnel and funds to conduct onsite monitoring.

Response. The Bureau presently conducts onsite visits and, to a great extent, programs are monitored. Therefore, the Bureau should have little problem in conducting onsite monitoring. In addition, the Office of Indian Education Programs will be consolidating its onsite visits so as not to duplicate monitoring efforts. No change was made.

Comment.—Monitoring by Agency and Area § 36.51(b). Three comments were received. One commenter objected to the term "Area School Board" since the law makes no allowance for an Area School Board. Two commenters suggested including the school supervisor along with the local school board for receiving reports under this paragraph.

Response. The Bureau agreed with the commenters. The term "Area" has been removed, and the words "local school supervisors" have been added to the last sentence.

Comment.—Maintenance of Records § 36.51(c). One commenter recommended that this paragraph be removed since authorized officials may use this paragraph to require records and reports of extreme amount and diversity.

Response. The use of records is covered by the Privacy Act and Freedom of Information Act. The indiscriminate use of records can result in stiff penalties. Also, reports from the public may only be required when authorized by the Office of Management and Budget, and this should curtail the use of non-required reports. No change was made.

Comment.—Assessment of Education Policy and Administrative Procedures § 36.51(e). Five comments were received. One commenter said that this paragraph deferred more to state education systems than tribal education systems. One commenter questioned whether ISEP funding would be adequate to support the evaluation requirements under this part. Another commenter suggested that the term "summative" be changed to "summary", thus eliminating the technical overtones. Two commenters recommended the substitution of the word "school" for the words "non-Federal agencies" and adding the words "as appropriate" after "Area" and before the word "shall" in the first sentence.

Response. The reason the standards do defer more to state education systems is that the law requires the Bureau to use state standards as the basis in the development of the standards under this part. We do not see any limitation placed on tribal education systems since the law allows the tribes to waive, in part or in whole, the standards under this part. The revision of the ISEP formula will address the cost of the standards under this part. The suggestion to substitute the word "summary" for the word "summative" was rejected since the two terms do not have the same meaning; the requirement under this section is for the total evaluation and not just a summary. The Bureau agreed with the last two commenters regarding changes in the first sentence by inserting the words "as appropriate" after the word "Area", and before the word "shall", but disagreed with substituting the word "school" for the words "non-Federal agencies".

Subpart G—Compliance and Waivers

Section 36.60 Compliance for minimium academic standards.

Comment.—Time Schedule for Reporting Compliance § 36.60(b). Three commenters addressed the "within 45 day" time frame for requiring schools to submit compliance reports since this would conflict with the student count. The commenters recommended this be changed to 60 days.

Response. The Bureau disagreed with the recommendations that the time frame for reporting compliance should be extended from 45 days to 60 days. A school should know whether it will be in compliance even before the school term

begins. Each school must begin their planning during the summer prior to beginning of the next school term. The 45 day time frame would enable the schools to validate the standards according to student ratios. We see no reason for extending the time frame.

Comment.—Informing Parents of Noncompliance § 36.60(c). Nine comments were received. One commenter remarked that the requirement for reporting to parents about compliance status would improve the education offered by the Bureau. Two commenters suggested that only the school boards should provide the compliance reports to parents upon request. Six other commenters thought this paragraph would reflect the poor conditions of the schools and would encourage parents to remove their children from the schools.

Response. The Bureau agreed with the comment that the school board must be notified but did not agree that the school board may at its option issue a public notice of this condition. The school supervisor shall notify parents or legal guardians of notice of noncompliance within 60 days of the beginning of the school term; therefore, the 45 day requirement has been changed to 60 days. The welfare of the children must be a public concern and should be reported. This is in line with local decisionmaking. The Bureau believes that the reporting of poor school conditions would encourage efforts to upgrade the school.

Comment.—Requirements for Compliance Report § 36.60(d). One commenter remarked that the compliance report requirements under this paragraph were unrealistic.

Response. The Bureau disagreed. The compliance requirements contained herein are no greater than those usually required to operate a school program. Each school must go through a planning, programming, budgeting, and evaluation process annually.

Comment.—Parental Notification of Non-Compliance § 36.60(d)(4). Two commenters saw no useful purpose of this requirement and recommended that it be removed.

Response. The Bureau disagreed. Parents especially should be informed of the conditions existing in the school. However, since the requirement is covered in (c) under this section, this paragraph has been removed. Subsection (d)(5) has been redesignated as (d)(4).

Comment.—Administrative Actions for Noncompliance § 36.60(f). Three comments were received. One commenter suggested that appropriate personnel actions should also include Central Office and support services personnel who have responsibility for ensuring compliance with the standards. Another commenter stated that "all applicable levels of school administration" means that only the principal will be affected. Another commenter expressed the fear that some administrators might use this paragraph as a "big club" against subordinates.

Response. It is the Bureau's intent to develop performance objectives at all levels of administration, especially for Central Office, Area, and Agency personnel. The performance objectives will tie directly into the functions and requirements of the standards. The performance objectives for all administrative levels will address the concerns that all administrative personnel, and not just principals, be held accountable. The Bureau believes that the appeal procedures available to subordinates will help to keep a proper balance. No change was made.

Comment.—Annual Report to Congress § 36.60(g). Three comments were received. One commenter questioned the need for requiring a "detailed analysis" for each school in meeting these standards. Another commenter addressed the need for improving the data collection system and streamlining the reporting system. The last commenter recommended that the law (Pub. L. 95–561, sections 1121(f) and 1122(c)) be printed here verbatim.

Response. The law and these standards require the Bureau to submit annually to the appropriate committees of Congress a detailed plan and a status report of each school's educational program. The Bureau agreed with the last commenter, and that section of the law has been printed verbatim.

Section 36.61 Waivers and revisions.

General Comment.—One commenter questioned the wisdom of granting waivers and suggested that all schools funded by the Bureau should be required to meet the same standards.

Response. Pub. L. 95–561 authorizes tribal governing bodies to waive the academic standards established by this part for Bureau-operated schools and, subject to the approval of the Secretary of the Interior, substitute alternative standards. Contract schools may accept the standards under this part.

Comment.—Waivers of Standards § 36.61(a). Fourteen comments were received. Twelve of the commenters objected to this paragraph by pointing out that it conflicted with Pub. L. 95–561. The objection centers around the waiver requirement which provides for the Assistant Secretary to first approve a waiver before tribes can modify these standards. Two commenters questioned the review authority of the Assistant Secretary as final and unreviewable.

Response. The Bureau agreed with the commenters, and this paragraph has been amended to give the tribes or their designated school board the authority to waive, in part or in whole, these standards as provided by law. However, this section has also been modified to make clearer that in the interim between the waiver of the standard(s) and the approval of the revised standard(s), minimum state standards or the standards under this part shall apply to the affected school(s). This part was also modified to require revised standard(s) within 60 days of the waiver by the tribal governing body. The sentence which allows the Assistant Secretary to reject alternative standards, and which states that his/her review shall be final is taken directly from 25 U.S.C. 2001(d).

Comment.—Time Schedules for Waivers and Revisions § 36.61(a)(1). Three comments were received. Two commenters recommended that this paragraph be amended to add: "However, waivers may be submitted during the first six months following the initial publication date of this part." Another commenter said this requirement was impractical.

Response. The Bureau disagreed. Waivers should not be based on the first six months of publication of the regulations but rather on program need. Waivers should have prior approval so as not to disrupt programs.

Comment.—Waiver Authority § 36.61(a)(5). Two comments were received concerning the waiver authority and the time limitation. One commenter indicated that this provision overrules the law since the only limitation put on this waiver authority is that it be "local". One commenter suggested that "45" be changed to 75 since 45 days may be too short.

Response. The Bureau agreed with the first commenter since the tribal decision to waive the standards is not subject to Secretarial approval. However, provision for interim standards is included in the amended section as a necessary condition for substituting the required alternative standards. The Bureau disagreed with the second commenter that the 45 day response time from the Secretary is too short and did not change the time period. However, this part was moved and incorporated into § 36.61(a).

Subpart H—National Dormitory Criteria

Amended.—Scope of Subpart § 36.70. The introductory section was amended

to include terminology used to designate specific employee positions and their assigned responsibilities. Terminology may vary depending upon whether the dormitory is a direct Bureau operation or contract operation.

Section 36.71 General provisions.

Comment.—Homeliving Specialist § 36.71(a). Six comments were received. Three commenters questioned the title of "Homeliving Sepcialist" as the head of a dormitory. Three commenters questioned the authority given to the position of "Homeliving Specialist" and suggested that we are creating a separate power base within a school.

Response. The Bureau disagreed with the commenters since the "Homeliving Specialist" is part of the staffing structure in the personnel requirements for Bureau-operated dormitories. The Bureau believes that each dormitory should be under the guidance of an individual; however, this does not mean that a separate authority is established. The school supervisor is still the administrative authority at each school and the one to whom all subordinates report. For small schools, the staffing or positions may have to be modified to meet special requirements of the schools. No change was made.

Comment.—Guidance Program § 36.71(b). Four comments were received. Two commenters thought that this paragraph would duplicate public school requirements. Two commenters said that this paragraph inadvertently imposes academic standards on non-Bureau operated schools.

Response. The Bureau agreed with the commenters, cnd this paragraph has been revised to reflect the concerns.

Comment.—Exceptional Child Program § 36.71(c). Two comments were received. One commenter suggested that this paragraph imposes academic requirements on the dormitories of non-Bureau-operated schools. One commenter remarked that this requirement is mandated by Pub. L. 94–142 and services must be provided by a qualified person.

Response. The Bureau believes that the individual education plan as required under this paragraph must be a requirement for all schools, including non-Bureau-operated schools, as required by Pub. L. 94–142. No change was made.

Comment.—Intense Residential Guidance Program § 36.71(d). One commenter recommended that unless there are additional requirements, this paragraph should reference 25 CFR 39.11(h).

Response. The Bureau disagreed with the commenter and believes that this paragraph is too important not to be restated. No change was made.

Comment.—Career Counseling § 36.71(e). One commenter thought this paragraph had the effect of imposing academic standards on non-Bureau-operated schools.

Response. The Bureau agreed in part. The Bureau believes that strong career counseling in education and job opportunities should be required at all levels and including non-Bureau-operated schools. However, the word "provide" was changed to "make available" so as to lessen the requirement under this part. A change was made to eliminate career counseling at the kindergarten level since the service is inappropriate for this grade level.

Comment.—Scheduling of Student and Counselors § 36.71(f). Two comments were received. One commenter objected to this paragraph which seemed to imply that students should be "scheduled" as employees are scheduled. Another commenter suggested that this paragraph be rewritten.

Response. The Bureau agreed with the commenters, and this paragraph has been amended. This paragraph does allow for flexible scheduling for students.

Comment.—Administrative Handbook § 36.71(g). Three comments were received. Two commenters objected to the presumption that this paragraph will be a rather large compendium of information about the school. One commenter made the comment that this has been discussed under § 36.10.

Response. The Bureau agreed to some extent with the commenters, and subsections (3) and (5) have been deleted since they also reflect academic requirements. However, the Bureau believes that schools must provide parents and students information about their dormitories.

Comment.—Orientation Programs § 36.71(h). One commenter remarked that this paragraph had limited application and should not be retained as a national criteria.

Response. The Bureau disagreed. Where appropriate, dormitories should provide orientation programs for those students who will be coming from feeder schools so as to provide an easier transition. No change was made.

Comment.—Student Activity Program § 36.71(i). Three comments were received. One commenter remarked that this paragraph appeared to be written for larger schools and should be replaced by much briefer and more general requirements which allow for meeting school and community specific needs and wishes. One commenter suggested that in § 36.71(i)(2) the plan be submitted to the school supervisor. One commenter made the statement that this was already discussed under § 36.43(a).

Response. The Bureau disagreed with the comment of replacing this paragraph with a briefer statement. The Bureau sees these requirements as the minimum needed for accountability. The Bureau did agree with the last two commenters and changes have been made accordingly.

Removed.—Student Activity Plan § 36.71(i)(4). This paragraph has been removed since § 36.71(i)(2) addresses the same issue.

Comment.—Parent/Student/Teacher Conferences § 36.71(j). Three comments were received. One commenter remarked that this paragraph has the effect of enforcing academic requirements on non-Bureau-operated schools. One commenter recommended that this paragraph be optional for "off-reservation boarding schools and peripheral dormitories". One commenter recommended that the words "student progress" be substituted for "student grades".

Response. The Bureau agreed with the commenters and this subsection was deleted.

Section 36.72 Elementary level dormitories.

General Comment. One commenter expressed concern that the requirements of the counselor/student ratios were eroding the power of the school board in establishing a staffing pattern in conjunction with the local school supervisor. *Response.* The Bureau sees no erosion of power since these are only minimum ratio requirements and the local school supervisor has the responsibility of determining staffing patterns based on the minimum requirements.

Comment.—Qualified Counselor § 36.72(a). One commenter recommended that dormitory counselors provide personal-social guidance and leave the academic counseling to the counselors as provided for in § 36.42. This commenter also requested clarification of what type of certification would be required.

Response. Dormitory counselors are not intended to be used for academic counseling but rather to provide the personal and social types of counseling needed in the dormitory environment. The certification requirements for such counselors will be in accordance with those of the state in which the dormitory is located.

Comment.—Certified Elementary Counselor § 36.72(a). One commenter

recommended that this paragraph be changed to read, "Each dormitory shall have access to professional counseling services." This is based on the fact that some schools have cooperative relationships with outside agencies to provide professional counseling when needed. One commenter was concerned about job titles being imposed upon non-Bureau-operated dormitories. Another commenter recommended that counselors be certified.

Response. It is agreed that cooperative arrangements with outside agencies to provide professional counseling services to the dormitories would meet the requirements of this paragraph. This paragraph has been amended to reflect such change. Regarding job titles, the introductory part of § 36.70 has been amended to correct this concern. Counselors will be required to be certified.

Comment.—Counselors as Supervisors § 36.72(b). Three commenters disagreed with this paragraph, believing it was detrimental to the small dormitory operation since it is often necessary for the counselor to act in a supervisory position in the absence of the Homeliving Specialist. Another commenter stated that this paragraph should not be imposed on non-Bureau-operated schools.

Response. The Bureau agreed with the first three commenters, and the language was changed to permit assignments of counselors to school supervisory duties depending upon the local need. In reply to the last commenter, the law mandates that both Bureau and contract boarding schools meet the criteria under this section. The amendment made to this paragraph should also be of benefit to contract boarding school administration in addressing the issue of counselors being assigned administrative duties.

Comment.—Counselor/Student Ratios § 36.72(c). Four commenters questioned the adequacy of the counselor/student ratios and indicated the likelihood of not being able to meet the ratios due to FTE and budget restraints. One commenter was concerned that the small dormitories will have a disadvantage in not being able to recruit for half-time counselors, as required in the ratio for less than 75 students, and would be able to obtain only full-time counselors.

Response. The revision of the ISEP formula will address the budgetary issues. The FTE issue will need to be addressed on an individual school or dormitory basis as the need arises. The ratios were kept as proposed. In reply to the last commenter, the Bureau believes that since these are minimum requirements, a school may decide to allocate more of its resources to this program if it chooses to do so.

Comment.—Counselors' Work Schedule § 36.72(d). Four commenters recommended that this paragraph be removed entirely or that reference to specific times be eliminated by amending the paragraph.

Response. We agreed with the commenters and have amended this paragraph to reflect flexibility in the counselors' work schedule.

Section 36.73 Secondary level dormitories.

Comment.—Certified Counselor § 36.73(a). One commenter recommended adding the words "or have access to" after the words "shall provide".

Response. The Bureau agreed and added the words "or have access to" after the word "provide" and before the word "the". This allows for contracting counseling services.

Comment.—Counselors as Supervisors § 36.73(b). One commenter responded that counselors in small schools may be the next professional position in line to assume school supervisory duties. The condition that "counselors shall not be assigned school supervisory duties" is too rigid.

Response. The Bureau agreed with the commenter and the language was changed to reflect permissive assignments of counselors to school supervisory duties depending upon the local need.

Comment.—Counselor/Student Ratio § 36.73(c). One commenter felt that the ratio of one counselor for each 300 students is sufficient if academic counselors are considered separately.

Response. Academic and dormitory counselors are considered separate, therefore, no change was made.

Comment.—Counselors' Work Schedule § 36.73(d). Four commenters indicated that establishing working hours for counselors in the standards is too restrictive and prevents local management from arranging work schedules to meet the particular needs of a dormitory.

Response. The Bureau agreed, and this has been changed to reflect that counselors' duty hours shall be arranged to provide maximum availability of services to students when students are not in academic sessions.

Section 36.74 Homeliving (dormitory operations).

Comment.—Dormitory Manager § 36.74(a). One commenter believed that this paragraph should be removed because of the wide variation between facilities and staffing needs. Another commenter stated that additional moneys will have to be allocated to meet this standard. A third commenter felt that the job title "dormitory manager" should be eliminated or limited to Bureau-operated schools.

Response. The Bureau rejected the first commenter's recommendation since it felt that at least one adult should be on duty at all times when the students are in the dormitory. The allocation of funding for the dormitory criteria will be addressed in the revision of the ISEP formula. An amendment to the introductory part of § 36.70 provides that the use of the job title "dormitory manager" will be optional for non-Bureau-operated schools.

Comment.—Staff/Student Ratio § 36.74(b). Sixteen comments were received on this paragraph. A group of commenters stated that the staff/student ratio was unacceptable because the ratio was either too low or too high. Two commenters felt that it was the prerogative of the local school supervisor and local school board to establish the staffing pattern. A group of commenters had concern for the additional FTEs and funds that would be required to meet the proposed staff/student ratio. One commenter inquired if there was a relationship between the ISEP formula in § 39.13 and the staffing ratios proposed in § 36.74(b). One commenter suggested that the sentence "staff ratios on week-ends shall be reduced . . ." be modified to reflect the need for additional staff members for certain weekend functions. One commenter questioned the need for the proposed staff/student ratio during the school hours. One commenter requested clarification of the phrase ". . . at least one adult is on duty . . . ."

Response. The Bureau will retain the staff/student ratios as originally proposed since no definitive agreement was established. The proposed staff/student ratios are minimum criteria which allow the school supervisor and the local school board to establish staffing patterns beyond the proposed minimum criteria. The revised ISEP formula will address the proposed staffing ratio. The staff ratios on weekends has not been changed. The proposed staff/student ratio is based on the ADM of the dormitory, hence the ratio of 1:40 during school hours. The phrase ". . . at least one adult is on duty . . ." means one adult on duty at all times when students are in the dormitory. No change was made.

Comment.—Group Instruction and Discussion Sessions § 36.74(c). One commenter felt that this proposed

standard imposes BIA rules on non-Bureau-operated schools.

Response. Pub. L. 95-561 requires that standards be set up for all dormitory situations. As such, the Bureau's position is that group instruction and discussion sessions should be held at least once per month, but preferably weekly. This paragraph is amended to reflect a minimum criteria allowing flexibility for topic identification.

Comment.—Dormitory Maintenance § 36.74(d). One commenter stated that the entire paragraph with the exception of the first sentence is operational detail and should not be imposed on non-Bureau-operated schools. The same commenter suggested a change of wording in this paragraph. Another commenter stated that bed and bath linen should be changed a minimum of twice a week.

Response. The Bureau disagreed with the first comment. The Bureau feels that these are minimum criteria that should apply to all Bureau-funded schools. The suggested change in wording of this paragraph has merit, and this section has been modified. However, the changing of bed and bath linen once a week is a minimum criteria only.

Comment.—Laundry and Student Clothing Upkeep § 36.74(e). One commenter suggested that students in the seventh grade be allowed to wash and dry their own clothing since they are responsible for the upkeep of their clothing. One commenter stated that, due to the diminishing number of dormitory staff, it would be difficult to wash the students' clothing while providing proper supervision of students. One commenter stated that this paragraph consists of operational detail that should be in Bureau manuals and not imposed upon non-Bureau-operated schools.

Response. The Bureau agreed with the rationale, and this paragraph has been amended accordingly and included a provision for contracting. The revised ISEP formula will address the issue of adequate staff in dormitories.

Comment.—Student Accountability System § 36.74(f). One commenter considered this paragraph to be operational detail which should be written into BIA manuals rather than imposed on non-Bureau-operated schools. The same commenter stated that general and specific statements of the school's responsibility to parents were missing. Another commenter stated that a *loco parentis* statement of responsibility is needed regardless of student age. Two commenters disagreed with the number of times the attendance checks of students be taken and for what age range.

Response. The Bureau's position is that these are minimum crtieria that should be followed by Bureau-funded schools. The type of statements and criteria for the student accountability system is left up to the school supervisor and the school board. No change was made.

Comment.—Student Check Out/In Procedure § 36.74(g). Two comments were received on this paragraph. One commenter stated that this paragraph should be removed since this should be a locally developed policy approved by the school board. The other commenter stated that this paragraph was too specific and omitted mentioning parents.

Response. The Bureau disagreed with all commenters; however, this paragraph has been amended to reflect parental approval and the adopting of school board policy governing the conditions for student release.

Comment.—Sick Room § 36.74(h). One comment was received. The commenter stated that the requirements for a sick room were too specific and suggested a more general statement. The commenter further suggested that some parts of this paragraph are operational detail.

Response. The Bureau agreed with the commenter, and this paragraph has been amended to be less specific.

Comment.—Emergency Procedures § 36.74(i). One comment was received. The commenter felt that the requirements for emergency situations were too specific.

Response. The Bureau disagreed with the commenter. Procedures to protect the welfare and safety of the children must be specific and adhered to at all times. No change was made.

Comment.—Tutoring Program § 36.74(j). Three comments were received. One commenter stated that the tutoring program was too specific. Another comment was that the tutoring program should also be shared by the academic section. One commenter asked, "What tutoring method would be used and would overtime be justified for tutoring?"

Response. The Bureau's position is that these are minimum criteria and the content, procedures, etc. are at the prerogative of the local school supervisor and the school board. No change was made.

Comment.—Job Title—Homeliving Specialist § 36.74(k). Two comments were received. One commenter suggested that different titles for homeliving specialist be used. The other commenter suggested that this paragraph be rewritten without reference to a specific job title.

Response. The changes in the introductory part of § 36.70 and § 36.74(k) have addressed the issue of job title applicability; the amendment here takes care of both comments received under this paragraph.

Comment.—Leisure-time Schedules § 36.74(l). Three comments were received, all of which recommended amendments to reflect a general policy rather than being specific.

Response. All three comments recommended were considered, and this paragraph was amended to be less structured and more general.

Comment.—First-aid Training § 36.74(n). The one commenter suggested that this paragraph be amended to include school board approval of training programs.

Response. The Bureau disagreed with the commenter since the board must approve the annual residential budget. The Bureau believes that all dormitory personnel must receive training in emergency first-aid procedures. No change was made.

Section 36.75 Space and privacy.

Comment.—Elementary Sleeping Room Size § 36.75(a). Seven commenters agreed with the proposed 50 to 65 square feet per elementary student requirement, exclusive of furniture, but pointed out that current facilities would not allow continuation of the current enrollment levels. Three commenters suggested that the proposed standard should apply only to new construction criteria for dormitories. One commenter suggested that the kindergarten level be removed from this rule.

Response. The Bureau has changed the proposed square feet per student varying from 50 to 65 square feet to "averaging from 40 to 60 square feet. The Bureau agreed with the commenters concerning the need for the space requirements to apply to new dormitories and has amended § 36.75(c) accordingly. The Bureau agreed with the comment concerning kindergarten students and has changed the rule from K-8 to 1-8, since kindergarten students are not to be housed in dormitories.

Comment.—Secondary Sleeping Room Size § 36.75(b). Two commenters questioned whether the 70 square feet referred to free space, exclusive of furniture. Twelve commenters stated that the proposed 70 square feet requirement is unrealistic for current facilities, but it should be used, in a modified form, in the construction of new dormitories.

Response. The intent of the proposed rule was 70 square feet per student, exclusive of furniture. This paragraph has been amended to clarify the meaning. The Bureau agreed with the

comments concerning the 70 square feet and has amended the wording of the rule from "70 square feet" to "averaging from 50 to 70 square feet", exclusive of furniture. The Bureau agreed with the comments concerning the need for the space requirements to apply to new construction criteria for dormitories and has amended § 36.75(c) accordingly. In addition, the paragraph between (b) and (c) of this part has been moved and added to the introductory part of this section.

Comment.—Number of Students Per Room § 36.75(c). Three commenters suggested that the proposed maximum of four students per room was desirable. A fourth commenter suggested a maximum of four students per room for grades 1–8 and two students per room for grades 9–12.

Response. The Bureau disagreed with the fourth commenter regarding the two students per room requirement for grades 9–12. However, the paragraphs in §§ 36.75(a) and 36.75(b) have been amended to specify that the number of students per room will be dependent on the square footage.

Comment.—Library Media Program § 36.75(d)(i)—(iv). Two commenters disagreed with the need for a library/media program in the dormitories. Four commenters agreed that such a library/media program is needed, but they pointed out that additional funds would be needed.

Response. The Bureau disagreed with the comments that a library/media program is not needed. However, the Bureau has removed the requirements for a librarian and reduced the resource materials for peripheral dormitories. Allocation of funding will be addressed in the revised ISEP formula.

Section 36.76 Compliance for the National Criteria for Dormitory Situations.

General Comment. The general reaction by four commenters was that a question existed about the feasibility of compliance given the reality that many facilities used as dormitories cannot meet the space requirements.

Response. The Bureau disagreed with the commenters. In order for the Bureau to establish a data base for evaluating dormitory requirements, an effective date for compliance must be established. However, § 36.76(a) has been incorporated under the introduction paragraph of this section and § 36.76(b) is now redisignated as § 36.76(a).

Comment.—Parental Notification of Noncompliance § 36.76(c). One commenter felt that the school board rather than parents should be notified.

One commenter felt that a letter informing parents of noncompliance was unnecessary harassment and suggested posting a notice of noncompliance. One commenter felt the paperwork required was unnecessary.

Response. The Bureau disagreed with the commenters. The Bureau believes that parents have the right to know the status of the dormitory program. However, the 45 day notice was amended to read within 60 days of the school term. Paragraph (c) of § 36.76(c) has been amended by removing paragraph (c)(5) and has been redesignated as § 36.76(b).

Moved. § 36.76(d) has been redesignated as § 36.76(c).

Moved. § 36.76(e) has been redesignated as § 36.76(d).

Comment.—Penalty for Noncompliance § 36.76(f). Two commenters responded that the number of consecutive years of noncompliance should be stated and that efforts to correct noncompliance conditions locally should be limited to expenditure of funds other than ISEP.

Response. The comment recommending adding a specific number to identify the consecutive years of noncompliance was accepted, and this requirement was amended to reflect two consecutive years. The comment on limitations on ISEP funds to meet compliance was not accepted. Paragraph § 36.76(f) has been redesignated as § 36.76(e). No other change was made.

Added.—§ 36.76(f). A new paragraph has been added that includes a detailed plan to be included in the annual budget submission to the appropriate committees of Congress.

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. This rulemaking will apply to and affect only Bureau-operated schools and some Indian-controlled contract schools, which are funded from Congressional appropriations; no other group(s) will be affected.

The information collection requirement contained in § 36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0092.

The information collection requirements contained in §§ 36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

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List of Subjects in 25 CFR Part 36

Indian education, Schools, Students, Parents, School boards, Educational facilities.

25 CFR Chapter I is amended by adding a new Part 36 to Subchapter E, to read as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart A—General Provisions

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36.60 Compliance for minimum academic standards.
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36.70 Scope of subpart.
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36.74 Homeliving (dormitory operations).
36.75 Space and privacy.
36.76 Compliance for the National Criteria for Dormitory Situations.

Authority: 25 U.S.C. §§ 2001, 2002, 2003, Pub. L. 95–561; 5 U.S.C. 301; 25 U.S.C. 2 and 9.

Subpart A—General Provisions

§ 36.1 Purpose, scope, and information collection requirements.

(a) The purpose of this rule is to establish minimum academic standards for the basic education of Indian children for Bureau-operated schools and for those Indian-controlled contract schools which adopt these standards and to establish national criteria for dormitory situations for schools operated by the Bureau of Indian Affairs and for Indian-controlled contract schools operating dormitories.

(b) These academic standards and dormitory criteria will take effect thirty (30) days after the date of their publication in the **Federal Register.** The Bureau of Indian Affairs intends to review and evaluate the applicability of the academic standards and dormitory criteria under this part after two years and make appropriate revisions.

(c) The information collection requirement contained in § 36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0092. The information is being collected to evaluate waiver request(s) from tribal government(s) and school board(s). The information will be used to ascertain the approval of academic waiver request. The obligation to respond is mandatory under 25 U.S.C. 2001. The information collection requirements contained in §§ 36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

§ 36.2 Applicability.

(a) The minimum academic standards for the basic education of Indian children established under this part, Subparts B through G, are mandatory for all Bureau of Indian Affairs operated schools unless a tribal governing body or the local school board, if so designated by the tribal governing body, waives, in part or in whole, the standards established under this part. When a tribe(s) formally takes action to waive, in total or in part, standards contained in this part, proof of such action shall be forwarded to the Agency Superintendent for Education (ASE) or area Education Programs Administrator (EPA). Within 15 days of receipt of such documentation the ASE or EPA shall notify, in writing, the parents or legal guardians whose children are attending the school(s) affected.

(b) The minimum academic standards for the education of Indian children established under Subparts B through G are not applicable to Indian-controlled contract schools unless the Indian-controlled contract school board formally adopts them in whole or in part. The Bureau will not refuse to enter into a contract on the basis of failure to meet these standards but will, through contracting procedures, assist the school in reaching compliance, if so requested by the Indian-controlled contract school board.

(c) The national criteria for dormitory situations established under Subpart H will serve as a minimum requirement and shall be mandatory for all Bureau-operated and Indian-controlled contract schools.

(d) Standards and criteria contained under this part will serve as minimum requirements for the regular school educational program.

(e) In states where additional minimum academic standards exist or are established, those state standards shall also apply.

§ 36.3 Definitions.

For purposes of this part, the following definitions apply:

(a) "Accreditation" means a school has received an official decision by the State(s) department(s) of education, or another recognized agency having official authority, that, in its judgment, the school has met the established standards of quality.

(b) "Average daily membership (ADM)" means the aggregate days membership of a given school during a given reporting period divided by the number of days school is in session during this period. Only days on which the students are under the guidance and direction of teachers shall be considered as days in session. The reporting period is generally a given regular school term.

(c) "Agency" means the current organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

(d) "Agency school board" as defined in section 1139(1), Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency school board.

(e) "Agency Superintendent for Education" means the Bureau official in charge of education functions at an Agency and to whom the school supervisor(s) and other educators under the Agency's jurisdiction report.

(f) "Area Education Programs Administrator" means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education

(g) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

(h) "Basic academic skills" means the abilities acquired by observation, study, or experience in mental and/or physical performance (e.g., proficiency in planning and investigating, operational techniques, comprehension, organization, execution, remembrance and application of knowledge to acquire a desired result) basic to the mastery of school work or other activity.

(i) "Basic education" means those components of education emphasizing literacy in language arts, mathematics, natural and physical sciences, history, and related social sciences.

(j) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(k) "Certification" means the general process by which the State or Agency authorized by the State adjudges and

stipulates that an individual meets the established standards which are prerequisite to employment for a teacher or administrator in education.

(l) "Competency" means having the requisite abilities, skills, or a specified level of mastery.

(m) "Computer literacy" used here means the general range of skills and understanding needed to function effectively in a society increasingly dependent on computer and information technology.

(n) "Content area" means the usual school subjects of instruction, such as: Language arts, mathematics, science, social studies, fine arts, practical arts, health, and physical education.

(o) "Counselor" means a staff member, including those in both academic and dormitory situations, who helps the students to understand educational, personal, and occupational strengths and limitations; to relate abilities, emotions, and aptitudes to educational and career opportunities; to utilize abilities in formulating realistic plans; and to achieve satisfying personal and social development.

(p) "Course of study" means a written guide prepared by administrators, supervisors, consultants, and teachers of a school system or school, as an aid to teaching a given course or an aspect of subject-matter content to a given category of pupil.

(q) "Criterion-referenced test" means an achievement test designed to measure specific skills within a subject area. Test results indicate which skills a student has or has not learned.

(r) "Days" means calendar days.

(s) "Director" means the Director of the Office of Indian Education Programs in the Bureau.

(t) "Dormitory" means a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school.

(u) "Dormitory manager" means a staff member who manages the day-to-day, 24-hour operation of one or more dormitories.

(v) "Elementary school" is defined as any combination of grades K–8 except when any of these grades are included in the junior high or middle school level.

(w) "Exceptional child program" means a program for students who are eligible to receive education and related services as defined by 25 CFR 39.11(i).

(x) "Feeder school" means a school whose exiting students are absorbed by a school offering instruction on the next higher grade level.

(y) "Formative evaluation" is an evaluation of progress during the implementation of a program. Its purpose is to provide immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

(z) "Goals" means a statement of what the school system is attempting to do to meet the comprehensive educational needs and interests of its pupils, in accordance with its statement of philosophy.

(aa) "Grade" means the portion of a school program which represents the work of one regular school year; identified by a designation such as kindergarten, grade 1 or grade 10.

(bb) "Grade level" is a designation applied to that portion of the curriculum which represents the work of one regular school year.

(cc) "High school" is defined as grades nine through twelve, except when grade nine is included in the junior high or middle school organizational unit.

(dd) "Indian-controlled contract school" means a school that is operated by a tribal organization and funded under a contract with the Bureau.

(ee) "Indian student" means a student who is a member of an Indian tribe and is one-quarter (¼) or more degree of Indian blood quantum.

(ff) "Indian tribe" or "tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(gg) "Intense residential guidance" means the program for residential students who need special residential services due to one or more of the problems as stated in 25 CFR 39.11(h).

(hh) "Junior high" or "middle school" is defined as grades seven and eight, but may include grade six when it is not included in the elementary school level and/or grade nine when it is not included in the high school level.

(ii) "Kindergarten" means a group of students or a class that is organized to provide educational experiences for children for the year immediately preceding the first grade.

(jj) "Librarian" means a certificated school employee whose principal responsibilities include selection, acquisition, preparation, cataloging, and circulation of books and other printed materials; planning the use of the library by teachers and students; and instructing students in the use of library books and materials, whether the library is maintained separately or as a part of an instructional materials center.

(kk) "Local school board" when used with respect to a Bureau-operated school means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

(ll) "Objectives" means a statement of the general, long-range aims and the specific, short-range aims which indicate what the school is attempting to do to meet the needs of the students in accordance with the philosophy, goals, and policies of the school system.

(mm) "Paraprofessional" means a staff member who works with and is under the supervision of a professional staff member but who does not have full professional status, e.g., teacher aide. The term denotes a level of knowledge and skills possessed by an individual or required of an individual to perform an assignment. The level of skills is usually at a predetermined minimum level.

(nn) "Parent" means a natural parent or guardian or a person legally acting as parent.

(oo) "Peripheral dormitory" is a facility which provides students boarding and lodging during the school year for the purpose of attending a public school.

(pp) "Regular program student" means all students including those determined to be eligible for services as defined under the Exceptional Child Program, 25 CFR 39.11(i).

(qq) "Residential school" means an educational institution in which students are boarded and lodged as well as taught.

(rr) "Residential Services under Exceptional Child Program" means a program providing specialized residential care as determined by 25 CFR 39.11(i).

(ss) "School" means an edcucational institution, including elementary, junior high or middle, high school, peripheral, cooperative, and contract schools serving students in grades Kindergarten through 12 and as further defined under 25 CFR 39.2(q).

(tt) "School board" means an Agency or local school board.

(uu) "School day", "instructional day", or "teaching day" is a day on

which the school is open and students are under the guidance and direction of teachers in instructional activities where the minimum number of instructional hours are met.

(vv) "School Supervisor" means the official in charge of a school and/or peripheral dormitory who reports to an Agency School Superintendent or an Area Education Programs Administrator, as appropriate.

(ww) "Secretary" means the Secretary of the Interior.

(xx) "Self-contained class" means a class having the same teacher or team of teachers for all or most of the daily session.

(yy) "standard" means the established criterion and/or specified requirement which must be met and maintained.

(zz) "Summative evaluation" means a systematic analysis of the results or products of a program after it is completed. Its purpose is to determine the extent to which the objectives of the program have or have not been achieved. One form of summative evaluation compares results with those of another "control" program using different procedures. Other forms compare results with past results or predetermined target outcomes.

(aaa) "Teacher" means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation.

(bbb) "Unit/Unit of instruction" means a major subdivision of instruction generally composed of several topics including content and learning experiences developed around a central focus such as a limited scope of subject matter, a central program, one or more related concepts, one or more related skills, or a combination of these. One unit equals one full year of instruction in a subdividion thereof. "Unit" and "credit" shall be used interchangeably.

Subpart B—Educational Management

§ 36.10 Standard I—Philosophy and goals.

(a) Each school shall develop a written philosophy of education that addresses the accumulation of knowledge and development of skills, interests, appreciations, ideals, and attitudes within the school's total educational program. The educational philosophy shall include but not be limited to: Conservation of tribal culture and natural resources, values of democracy, devotion to equality, individual freedom, political liberty, democratic process, and the mastery of knowledge. The statement of goals shall include a statement of what the school is attempting to do to meet the needs and interests of its students and community, in accordance with the statement of philosophy.

(b) The statement of philosophy and goals shall be developed with the involvement of students, parents, lay citizens, school staff, and tribe(s) and shall be formally adopted by the local school board.

(c) The philosohy and goals shall be reviewed annually and revised as necessary by each school.

(d) A copy of the philosophy and goals shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(e) Informational provisions shall be developed in the form of a manual, handbook, brochure, or other written document(s) of the minimum academic standards of the school's programs and the basic rules and procedures of the school. The staff, students, and parents shall receive the written document or documents and have same explained to all who request explanation. The topics covered in the document(s) shall include but not be limited to the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered;

(3) A brief explanation of curricular offerings;

(4) A copy of student rights handbook;

(5) Basic practices related to:

(i) Grading system;

(ii) Graduation requirements, if applicable;

(iii) Attendance policies;

(iv) Special programs at the school; and

(v) Student activities available for students.

§ 36.11 Standard II—Administrative requirements.

(a) *Staffing.* Each school shall, at a minimum, meet the following requirements:

(1) The overall school ratio of regular program students to regular program teachers in self-contained classrooms shall not exceed the following except under the conditions set forth in paragraphs (a)(4) (i) and (ii) of this section. Average daily membership (ADM) shall be used in meeting the following ratios.

Level	Ratio
Kindergarten	20:1
1st grade—3rd grade	22:1
4th grade—high school	25:1

(2) Multi-grade classrooms that cross grade-level boundaries (e.g., K–1, 3–4, etc.) shall use the maximum of the lower grade. In grades K–8, grades shall be consolidated to meet the teacher ratios listed above.

(3) The daily teaching load per teacher in departmentalized classes shall not exceed 150 students (ADM) except in activity type classes such as music and physical education.

(4) Schools exceeding these specific staffing ratios for over 30 consecutive days during one school year shall submit a justification for a request for a waiver to the Director, through the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, which may be approved for a period not to exceed one school year and for the following reasons:

(i) Additional classroom space is not available for establishing another class; or

(ii) The school, Agency, Area and Office of Indian Education Programs Applicant Supply File has been exhausted and the required teacher position cannot be filled. However, efforts to fill the vacancy shall be continued.

(5) Each school shall provide, in the absence of a regular teacher, a certified substitute teacher who meets the State substitute teacher qualifications. In the event that such a substitute is not available, coverage will be provided by a school employee designated by the school supervisor. A class cannot have as a teacher an employee without teaching credentials for more than 20 school days during any one school year.

(b) *Written school enrollment and attendance policies.* Each school shall have written school enrollment and attendance policies in compliance with and/or consistent with 25 CFR 31, Federal Schools for Indians, the statutes of the State, and tribal education ordinances.

(c) *Geographic attendance boundaries.* Each Agency Superintendent for Education shall establish and implement non-overlapping geographic attendance boundaries within that Agency for each school within the administrative jurisdiction of that Agency. The establishment of such geographic boundaries shall require coordination with contiguous Agencies within the Area and consultation with the Agency or other relevant school boards and/or tribes and shall be reviewed each year to appropriately adjust for geographic changes in enrollment, changes in school capacities, and improvement of day school opportunities for students. The Director shall establish and implement

geographic attendance boundaries for each off-reservation boarding school under his/her administrative jurisdiction. The establishment of geographics boundaries shall require coordination with other Area Education Programs Administrators similarly affected by the requirement of this part, the affected tribes, and the Director.

§ 36.12 Standard III—Program needs assessment.

The policy and procedures of each school and its curricula shall be developed and revised based on an assessment of educational needs. This needs assessment shall be conducted at least every seven (7) years at the same frequency as required in § 36.50, School Program Evaluation. This assessment shall include at least the following:

(a) A clear statement of student educational goals and objectives. A student educational goal is defined as a statement of the knowledge, skills, attitudes, or concepts students are expected to exhibit upon completion of a grade level. Student educational objectives are defined as statements of more specific knowledge, skills, attitudes, or concepts students must exhibit in order to achieve the goal.

(b) The collection of appropriate data from which valid determinations, judgments, and decisions can be made with respect to the status of the educational program, e.g.,

(1) Perceptions of the parents, tribes, educators, and the students with regard to the relevance and importance of the goals.

(2) The extent to which educational goals and objectives have been achieved.

(3) The data developed as a result of the evaluation outlined in § 36.50 School Program Evaluation.

(c) A statement of educational needs which identifies the difference between the current status of students and the desired goals for the students.

(d) A plan of action to remediate assessed needs.

§ 36.13 Standard IV—Curriculum development.

(a) Each school shall implement an organized program of curriculum development involving certified and non-certified staff and shall provide the opportunity for involvement by members of the local community.

(b) Curriculum development program activities shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school shall involve staff and provide the opportunity for involvement by the tribal community in planning programs, objectives, and activities which meet student/teacher needs.

Subpart C—Minimum Program of Instruction

§ 36.20 Standard V—Minimum academic programs/school calendar.

(a) Each school shall meet the applicable minimum program of instruction provided in this subpart and, where applicable, the graduation requirements under §36.32. A school that has difficulty in meeting these minimum academic program requirements may seek alternative ways of meeting some portions of the minimum program. For example, courses may be taught in alternate years. Should a school wish to adopt alternative measures, the school shall submit a request for approval to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, for the adoption of alternative measures with a written justification as to how this action will meet the applicable minimum program of instruction.

(b) *Length of school term and day.* All schools shall provide an educational program of studies which is conducted for not less that 180 instructional days per school term. Regular program students shall be in instructional activities, exclusive of lunch (which must be at least 30 minutes a day), in accordance with the following minimums: Kindergarten—2.5 instructional hours/day; grades 1–3—4.5 instructional hours/day; grades 4–6—5.0 instructional hours/day; grades 7–12—5.5 instructional hours/day.

(c) If an emergency arises from an uncontrollable circumstance during the school day which results in the dismissal of students by the school administration, the day may be counted as a school day provided that three-fourths of the instructional hours are met.

(d) The educational program shall include multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(e) All intraschool programs (e.g., library, instructional labs, physical education, music, etc.) which are directly related to or affect student instruction shall provide services from the beginning of the school term through the final class period at the close of the school term.

§ 36.21 Standard VI—Kindergarten instructional program.

(a) The curriculum for kindergarten shall provide children with experiences which emphasize language development, native language where necessary as determined by 25 CFR 39.11(g), and performance of the requirements in paragraph (b) of this section. Such programs shall assist children in developing positive feelings toward themselves and others.

(b) A kindergarten instructional program shall include but not be limited to:

(1) Language (observing, listening, speaking).

(2) Exploration of the environment (number, space and time relationships, natural science).

(3) Psychomotor and socialization development.

(4) Development of imaginative and creative tendencies.

(5) Health education inclusive of the requirements contained in the Act of May 20, 1886, 24 Stat. 69.

§ 36.22 Standard VII—Elementary instructional program.

(a) The elementary instruction programs, grades one through six, shall include but need not be limited to:

(1) Language arts.

(2) Mathematics.

(3) Social studies.

(4) Sciences.

(5) Fine arts.

(6) Physical education.

(b) Each school shall integrate the following content areas into its curriculum:

(1) Career awareness,

(2) Environmental and safety education,

(3) Health education (includes requirements contained in 24 Stat. 69),

(4) Metric education, and

(5) Computer literacy.

§ 36.23 Standard VIII—Junior high/middle school instructional program.

(a) The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows.

(b) The curriculum shall include the following required instructional content areas at each grade level but need not be limited to:

(1) *Language arts.* One unit shall be required of each student every year.

(2) *Social studies.* One unit shall be required of each student every year.

(3) *Mathematics.* One unit shall be required of each student every year.

(4) *Science.* One unit shall be required of each student every year.

(5) *Fine arts and practical arts.* One unit each shall be required of each student in the junior high/middle school instructional program.

(6) *Computer literacy.* One unit shall be required of each student in the junior high/middle school instructional program.

(7) *Physical education.* One unit shall be required of each student in the junior high/middle school instructional program.

(c) The following content areas shall be integrated into the curriculum.

(1) Career exploration and orientation.

(2) Environmental and safety education.

(3) Metric education.

(4) Consumer economics (including personal finances).

(5) Health education (includes meeting the requirements contained in 24 Stat. 69).

(d) Languages other than English are encouraged to be offered as a content area beginning at junior high/middle school level.

(e) Student enrollment in any laboratory or vocational exploration class shall be consistent with applicable health and safety standards.

§ 36.24 Standard IX—Secondary instructional program.

(a) The secondary instructional program shall reflect the philosophy of the student, tribe, community, and school, and an awareness of the changing world.

(b) The secondary instructional curriculum shall include the following content areas:

(1) Language arts (communication skills).

(2) Sciences.

(3) Mathematics.

(4) Social studies.

(5) Fine arts and practical arts.

(6) Physical education.

(7) Languages other than English.

(8) Driver education. (See guidelines available from the applicable State Department of Education.)

(9) *Vocational education.* Curriculum shall be designed and directly related to actual occupational trends (national, regional, and local) and to introduce and familiarize students with various occupations in technology, industry and business, as well as required special skills and the training requisites. Programs shall be directed toward assisting students in making career choices and developing consumer skills and may include the following:

(i) Vocational exploration,

(ii) Vocational skill development, and

(iii) School/on-the-job cooperative education programs.

(c) The following shall be integrated into the curriculum:

(1) Consumer economics (including personal finances),

(2) Metric education,

(3) Safety education, and

(4) Health education. (In addition, the program shall meet the requirements contained in 24 Stat. 69.)

(d) The high school program shall provide program coordination with feeder schools, career direction, and preparation for the student entering independent living through employment, post-secondary education, and/or marriage.

(e) Yearly class schedules shall take into account the graduation requirements of each student.

(f) Student enrollment in any laboratory or vocational class shall be consistent with applicable health and safety standards.

Subpart D—Student Instructional Evaluation

§ 36.30 Standard X—Grading requirements.

(a) Each school shall implement a uniform grading system which assesses a student's mastery of the prescribed objectives of the courses of study undertaken. The mastery of prescribed course objectives shall be the primary measure of academic attainment for reporting student grades on report cards.

(b) The information derived from student instructional evaluations shall be shared with the student and with the parents and shall be used to give teachers and students direction for subsequent learning activities.

(c) Parent/teacher and parent/teacher/student conferences focused on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and school. Residential schools may meet this standard by documenting the communication of student grades on report cards to parents.

(d) Each school shall issue a report card to parents of students who are under the age of eighteen (18) and to students eighteen (18) years of age and older on a regular basis, but not less than four (4) times yearly. The report card shall include, but not be limited to, the following sections:

(1) Recommendations and probable promotion status;

(2) Appropriate signatures and request for return of report cards; and

(3) Student attendance record.

(e) A summary of each year's final card shall become part of the student's permanent school record.

§ 36.31 Standard XI—Student promotion requirements.

Each school shall establish and implement a promotion policy which shall be submitted to and approved by the local school board and Agency Superintendent for Education or Area Education Programs Administrator, as appropriate. The requirements shall include, but not be limited to, the following:

(a) Each grade level or equivalent shall have a minimum criteria for student promotion based primarily on measurable mastery of the instructional objectives.

(b) Criterion-referenced tests that evaluate student skills shall be utilized for measuring the mastery of instructional objectives. The evaluation results shall form the basis for the promotion of each student.

(c) A student who has not participated, either directly or through approved alternative instructional methods or programs, in a minimum of 160 instructional days per academic term or 80 instructional days per semester without a written excused absence shall not be promoted. A school board or a school committee may review a promotion decision and, if warranted due to compelling and/or extenuating circumstances, rescind in writing such action on a case-by-case basis. Alternative instructional methods shall be submitted in writing for approval by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

§ 36.32 Standard XII—Graduation requirements for a high school diploma.

Graduation requirements contained under this section shall be applied beginning with the graduating class of the 1987–88 school year.

(a) Satisfactory completion of a minimum number of units shall be the measure for the issuance of a high school diploma.

(b) To graduate, a student shall earn 20 units in a four year high school program unless the state in which the school is located exceeds these requirements, in which case the state's requirements shall apply; fifteen (15) units shall be required as follows:

(1) Language arts—four (4) units.

(2) Mathematics—three (3) units.

(3) Social studies—three (3) units.

(i) One (1) unit in United States history;

(ii) One-half (½) unit in civics/government;

(iii) One-half (½) unit in tribal history/government;

(iv) One-half (½) unit in Indian studies; and

(v) One-half (½) unit in any other social studies;

(4) Science—two (2) units.

(i) One (1) unit in the general science area.

(ii) One (1) unit in laboratory science areas, i.e., chemistry, physics, biology, zoology, laboratory anatomy.

(5) Physical education—one (1) unit.

(6) Practical arts—one (1) unit. Credit in any vocational course may also be used to satisfy this required unit.

(7) Fine arts—one (1) unit. Music, art, dance, drama, theatre, and other fine arts courses may be used to satisfy this required unit. These are minimum requirements; local schools may establish academic or vocational requirements beyond those prescribed by these standards.

(c) A school with an average enrollment of fewer than 75 students may offer subjects in alternate years. If schools use this pattern, alternating pairs of subjects shall be listed and approved by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(d) Credits earned through approved correspondence or extension study may be accepted if such credits are from schools approved or accredited by the state in which they are located or by a college or university which is regionally accredited for such purposes.

(e) Students who successfully complete the requirements of the High School Proficiency Examination in the State in which the school is located shall receive an endorsement so stating on their diplomas.

Subpart E—Instructional Support

§ 36.40 Standard XIII—Library/media program.

(a) Each school shall provide a library/media program which shall, as a minimum, meet the applicable state and/or regional standards, but shall not be limited to these, and shall include the following:

(1) A written set of instructional and service objectives shall be established that is intergrated and consistent with the school's educational goals and philosophy. The librarian or educational media specialist, with students and staff, shall set objectives based on assessed academic and residential needs. The program and services will be evaluated yearly by the principal and the librarian or educational media specialist to determine the degree to which all objectives have been met.

(2) A written policy for the selection of materials and equipment shall be developed by a library committee in collaboration with the librarian and be approved by the school board. The colleciton of materials shall include as a minimum the following:

(i) A collection of books suitable for the range of student abilities and interests being served in the following ADM ratios.

(A) Elementary K–6, 15 books per student

(B) Middle 7–8, 12 books per student

(C) Secondary 9–12, 10 books per student

It is required that materials pertaining to Indian Tribes and/or Alaskan Natives be integrated within this basic collection.

(ii) Eight (8) to 12 percent of the basic collection must be composed of reference books, currently relevant and in a state of good physical condition, for practical use. Single copies of the principal textbooks used to complement instruction shall be in the collection, but textbooks cannot be counted toward this standard.

(iii) A periodical collection, suitable for the range of student abilities and interests being served, consisting of one (1) periodical for every ten (10) students, shall be maintained. Schools of over 200 will have a base collection of 20 periodicals.

(iv) A professional collection for the school staff shall be developed and maintained by the librarian in cooperation with a faculty committee.

(v) A variety of audio-visual materials, suitable for the range of instruction being provided, of at least 750 items or five (5) items for each student, whichever is larger, and inclusive of materials located in the classrooms shall be maintained. This category includes some of each of the following: Tactile objects, globes, models, maps, films, film-strips, microforms, slides, audio and video tapes, recordings, transparencies and graphics, and the equipment to use all of these. Multiple items within a specific set of materials will be counted as separate items.

(3) There shall be a library media center serviced by a librarian. Schools with fewer than 200 students are encouraged, wherever feasible, to cooperate in sharing librarian resources. Schools within an Agency and/or Area may cooperatively share the costs and services of a librarian who shall facilitate sharing of the combined available resources among the cooperating schools in accordance with the following ratios:

School Enrollment (ADM)

Up to 100—⅕ time librarian

101–200—⅕ time librarian and ½ time library aide or 20 hours of library activity

201–400—1 full-time librarian or ⅗ time librarian provided the school has a full-time library aide

401+—1 full-time librarian and a full-time library aide

(4) All libraries must conduct an annual inventory of available books, materials, and equipment in accordance with the acquisitions and selection policies.

§ 36.41 Standard XIV—Textbooks.

(a) Each school shall establish a textbook review committee composed of teachers, parents, and students, and school board members. Appointment to the textbook review committee shall be subject to school board approval.

(b) The textbook review committee shall establish a procedure and criteria for the annual review of textbooks and other materials used to complement instruction. The criteria shall include, but not be limited to, the following:

(1) The textbook content shall meet the course objectives which are within the adopted school curriculum.

(2) The textbooks shall, as much as possible, reflect cultures accurately.

(3) The textbooks shall be current, in good physical condition, and varied in reading levels.

(c) Each school shall equitably distribute instructional materials to all classrooms. Each school shall inventory all property and equipment annually prior to requisitioning additional materials. Copies of the inventory shall be kept on file by the school staff.

§ 36.42 Standard XV—Counseling services.

Each school shall offer student counseling services concerned with physical, social, emotional, intellectual, and vocational growth, as determined, under this part, for each individual and the school as a whole through a school-wide testing program.

(a) School-wide testing requirements. Each Agency shall institute and supervise a uniform testing program for its schools in order to provide for the objective assessment of student academic performance. Required formal tests will be administered annually to all regular program students in grades two through 12; first grade may be included where appropriate. These formal tests and their subject content will include, but not be limited to, the following:

(1) A pre-test and post-test from nationally-normed and standardized achievement tests which can be

nationally correlated in the content areas of reading, language arts, and mathematics to be administered in September and May of each school year or the norming dates of the test.

(2) Each school shall report, as directed, the summative ressults of all formal tests under paragraphs (a)(1) of this section to the Agency or Area, as appropriate, and respective school boards. Parents shall be informed of the results of such tests for their children.

(3) Each Agency or Area, as appropriate, shall report results of all formal tests under paragraph (a)(1) above to the Office of Indian Education Programs.

(b) Each counseling program shall provide the following:

(1) Each school having a minimum school ADM of 200 students shall make provisions for the full-time professional services of a counselor, and each school enrolling fewer than 200 students shall make provisions for a part-time professional counselor.

(2) The counselors shall be familiar with the unique tribal, social, and economic characteristics of students.

(3) The counseling program shall contain the following:

(i) A written referral procedure;

(ii) Counseling techniques and documentation procedures to provide for the career, academic, social, and personal needs of the students which are based on the cultural beliefs and values of the students being served;

(iii) Preventative and crisis counseling on both individual and group bases;

(iv) Confidentiality and security of counseling records for each student; and

(v) Design and implementation of orientation programs to facilitate the pupil's transition from elementary to junior high/middle school and from junior high/middle school to high school.

(vi) Each junior or middle school and high school student shall receive academic counseling a minimum of twice yearly during which time the counselor shall assist the student in developing a written academic and career plan based on ability, aptitude, and interests. Additionally, counselors will assist high school students in selecting courses which satisfy the school's and the state's graduation requirements and the student's academic and career plan. Further, seniors will be given aid in completing registration and/or financial assistance applications for either vocational or academic post-secondary institutions.

(vii) Each high school counseling program shall be required to have on file for each student a planned academic program of studies which is available from the regular course offerings of the school to meet the student's career objectives and which will show that the student has received counseling.

§ 36.43 Standard XVI—Student activities.

All schools shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Each activity program shall help develop leadership abilities and provide opportunities for student participation but not be limited to activities that include special interest clubs, physical activities, student government, and cultural affairs. The activity program shall be an integral part of the overall educational program.

(a) All student activities shall be required to have qualified sponsors and be approved by the school supervisor, and the school board shall approve the overall activity plan. A qualified sponsor is a professional staff member of the school that is given responsibility to provide guidance or supervision for student activities.

(b) A plan of student activity operations shall be submitted, by each activity at the beginning of each school year, to the school supervisor. The plan will include the purpose, structure, coordination, and planned types of fund-raising activities.

(c) School may participate in interscholastic sports and activities on an informal or formal basis. On an informal basis, the Bureau-operated schools will coordinate with other schools in setting up a schedule of sports and games. Schools that participate in state-recognized leagues will abide by those state rules regulating inter-school competition.

(d) Until comparable competitive opportunities are provided to all students, regardless of sex, no student shall be barred from participation in interscholastic competition in noncontact sports except on the basis of individual merit.

(e) Residential schools shall plan and provide an intramural program for all students. The program shall include a variety of scholastic and sport activities.

(f) Students shall be involved only in activities which are sanctioned by the school.

(g) All student activities involved only in fund raising are required to establish a school/student activity bank account following school/student banking procedures outlined under 25 CFR 31.7. All student activity accounts shall be audited annually.

(h) The school shall provide for the safety and welfare of students participating in school-sponsored activities.

(i) Each sponsor of a student activity will be given orientation and training covering the responsibilities of a sponsor by the school supervisor.

Subpart F—Evaluation of Educational Standards

§ 36.50 Standard XVII—School program evaluation and needs assessment.

Each school shall complete a formal, formative evaluation at least once every seven (7) years beginning no later than the second complete school year following the effective date of this part. Schools shall follow state and/or regional accreditation, or accreditation requirements equal to the state in which a school is located. Each school shall follow the prescribed evaluation cycle. The primary purpose of this evaluation will be to determine the effects and quality of school programs and to improve the operations and services of the school programs.

(a) Each school's evaluation design or model will provide objective and quantitative analysis of each area to be evaluated. The analysis shall include product and process evaluation methods. The areas to be reviewed will include, but not be limited to, the following:

(1) School philosophy and objectives.

(2) Administrative and organizational requirements.

(3) Program planning and implementation.

(4) Curriculum development and instruction.

(5) Primary education.

(6) Program of studies for elementary, junior high/middle, and high schools.

(7) Grading requirements.

(8) Promotion requirements.

(9) High school graduation requirements.

(10) Library/media.

(11) Textbooks and other instructional materials.

(12) Counseling services.

(13) Medical and health services.

(14) Student activities.

(15) Transportation services.

(16) Staff certification and performance.

(17) Facilities (school plant).

(18) Parent and community concerns.

(19) School procedures and policies.

(20) School board operations.

(b) The Director, within six (6) months from the effective date of this part, shall distribute to each school, Agency or Area, as appropriate, a standardized needs assessment and evaluation instrument with guidelines for developing and applying a locally appropriate evaluation model for

carrying out the requirements of this standard.

§§ 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Educaton or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

(1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required which otherwise would be available for these standards;

(2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;

(3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and

(4) Submit annually to the Director a copy of the summative evaluation.

Subpart G—Compliance and Waivers

§ 36.60 Compliance for minimum academic standards.

Implementation of these standards shall begin immediately on the effective date of this part.

(a) A school is in compliance when it has met and satisfied all the requirements of these standards.

(b) Each school supervisor shall, within 45 days after the start of each school term, submit a compliance report to the local school board; within 15 days thereafter, the compliance report shall be submitted to the Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, which attests to whether a school is in compliance or noncompliance.

(c) In those instances where a school does not meet the requirements of these standards, the school supervisor shall inform the parents or legal guardians by letter no later than 60 days after the start of each school term.

(d) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the school has or has not met all of the requirements.

(2) A specific listing of the requirements which have not been met.

(3) A summary of an action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(e) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each school's compliance report and shall provide the Director with a summative report by November 15 of each year which includes:

(1) A listing of those schools not in compliance.

(2) A detailed statement as to why each school is not in compliance and how it proposes to reach compliance.

(3) A plan of action outlining what actions the Agency Superintendent for Education or Area Education Programs Administrator will take to assist the school(s) to reach compliance.

(f) In the event a school is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all applicable levels of school administration. Noncompliance may be acceptable grounds for dismissal.

(g) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under § 1121 of Pub. L. 95-561, 25 U.S.C. 2001.

§ 36.61 Waivers and revisions.

(a) The tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standard(s) established in this part, where the standard(s) is deemed by such body to be inappropriate and shall also have the authority to revise such standard(s) to take into account the specific needs of the tribe's children. This includes Bureau-operated schools. When the tribal governing body, or local school board if so designated by the tribal governing body, waives the standard(s) or part thereof, it shall within 60 days submit revised standard(s) to the Assistant Secretary for approval. In the interim between the waiver of the standard(s) and the approval of the revised standard(s), the standards of this part or minimum state standards shall apply to the affected school(s). In the notice of the waiver, the tribal governing body or its designee shall state whether the standards in this part or the minimum state standards apply to the affected school(s) for such interim period. The Assistant Secretary shall respond to the revised standard(s) within 45 days of receipt. Revised standard(s) shall be established by the Assistant Secretary unless specifically rejected by the Assistant Secretary for good cause and in writing. The written notice of rejection shall be sent to the affected tribe(s) and local school board. Such rejection shall be final. All revised standards shall be submitted to the Assistant Secretary in writing and will adhere to the following procedure:

(1) Waivers and revisions must be submitted at least 75 days prior to the beginning of the school term.

(2) The section or part of the standard to be waived must be specified, and the extent to which it is to be deviated from shall be described.

(3) A justification shall be included with a revised standard, which explains why the alternative standard is considered necessary.

(4) Measurable objectives of the alternative standard(s), the method of achieving the alternative standard(s), and the estimated cost of implementation must be stated.

(b) The Assistant Secretary shall assist the school board of an Indian-controlled contract school in the implementation of the standards established under this part if the school board requests that these standards, in part or in whole, be implemented. At the request of an Indian-controlled contract school board, the Assistant Secretary shall provide alternative or modified standards to those established in this part to take into account the needs of the Indian children and the Indian-controlled contract school.

Subpart H—National Dormitory Criteria

§ 36.70 Scope of subpart.

This subpart contains the criteria and mandatory requirements for all dormitories. The individual employee responsibilities, based on the terminology used to designate specific employee positions and their assigned responsibilities, may vary depending upon whether the dormitory is a direct Bureau operation or contract operation.

§ 36.71 General provisions.

(a) The Homeliving Specialist is the administrative head of the dormitory who shall have sufficient autonomy and authority to ensure the successful functioning of all phases of the dormitory program, and, in dormitories attached to a school, shall report to the school supervisor.

(b) In situations where a Bureau-funded dormitory is maintained, operated, and administered separately from the academic program, this dormitory will ensure access to or provide a guidance program equal to the standards as those under § 36.42 of this part.

(c) Students who qualify for residential services under the Exceptional Child Program must have, in their individualized education plan, objectives that are to be met in the homeliving program. Documentation to support completion of these objectives is required.

(d) Dormitories with intense residential guidance programs shall have updated written descriptions of the programs with stated purposes, objectives, activities, staffing, and evaluation system. Each student diagnosed as being in need of intense guidance services shall have a file which contains the following:

(1) Documentation of eligibility according to the definition contained under 25 CFR 39.11(h);

(2) Documentation of a diagnosis of the student's needs;

(3) A placement decision signed by a minimum of three (3) staff members;

(4) An individualized treatment plan which includes:

(i) Referral date and referral sources;

(ii) Diagnosis identifying specific needs;

(iii) Specific goals and objectives to be met;

(iv) Record of specific services including beginning and ending dates;

(v) Designation of responsible staff person(s); and

(vi) A means by which the student's progress and the effectiveness of the individualized treatment plan can be periodically reviewed and reevaluated.

(e) Each dormitory program that does not have an academic program under Subpart C shall make available career counseling information on educational and occupational opportunities and help students assess their aptitudes and interests. This shall be done on a continuing basis, beginning at the elementary level.

(f) Counseling services shall be made available for students during non-academic hours.

(g) Provisions shall be made to interpret to staff, students, and parents the administrative policies and practices of the dormitory. This provision shall be made in the form of a manual, handbook, brochure, or other written document that will be made available and explained to all who are interested. The topics shall include, but not be limited to, the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered; and

(3) A copy of the student rights handbook.

(h) Program will be designed and orientation programs implemented to facilitate the pupils' transition from elementary to middle school and from middle to high school, where appropriate.

(i) All dormitories shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Programs shall provide opportunities for student participation in, but not limited to, activities that include special interest clubs, physical activities, student government, and cultural affairs. In addition, the following provisions shall be adhered to:

(1) Dormitories shall plan and provide for an intramural program that includes a variety of scholastic and sport activities.

(2) A plan of operation shall be submitted by each activity at the beginning of each school year to the school supervisor and approved by the school board. The plan shall include the purpose, structure, and coordination of all activities.

(3) All dormitories conducting fund-raising activities are required to established a school/student activity bank account following school/student banking procedures outlined under 25 CFR Part 31.7. All accounts shall be audited annually.

§ 36.72 Elementary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training and experience in dealing with elementary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of counselor while holding the position of school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselors:

Less than 75 students: ½ time counselor
75–150 students: 1 full-time counselor
151–225 students: 1 full-time and ½ time counselor
226–300 students: 2 full-time counselors

For dormitories that exceed 300 students (ADM), additional counselor time shall be provided according to the above ratio. Dormitories within an Agency are encouraged to try a variety of approaches to guidance service. In this arrangement, the counselor's time may be shared between dormitories. As long as one half-time, professionally-trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Dormitory counselors' work hours shall be arranged to provide maximum availability of services to students when they are not in academic session.

§ 36.73 Secondary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training

and experience dealing with secondary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of a counselor while holding a position as a school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselor:

Less than 100 students: ½ time counselor
100–199 students: 1 full-time counselor
200–300 students: 1 full-time and ½ time counselor

For dormitories that exceed 300 students (ADM), counselor time will be provided according to the above radio. As long as one half-time, professionally trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Counselors' work hours shall be arranged to provide maximum availability of service to students when they are not in academic session.

§ 36.74 Homeliving (dormitory operations).

Staff shall be provided so that at least one adult is on duty at all times when students are in the dormitory. Each dormitory program shall include, but not be limited to, the following:

(a) Every dormitory facility shall be under the direct supervision of a dormitory manager. A building composed of separate wings or several floors shall be counted as one facility.

(b) Each dormitory operation shall provide the following minimum on-duty paraprofessional staff to student ratio (ADM):

	Ratio
Grades 1 to 6	
Weekdays:	
Mornings	1:30
During school hours	1:40
Evenings	1:30
Nights	1:40
Weekends:	
Mornings	1:30
Evenings	1:30
Nights	1:40
Grades 7 to 12	
Weekdays:	
Mornings	1:50
During school hours	1:80
Evenings	1:50
Nights	1:80
Weekends:	
Mornings	1:50
Evenings	1:50
Nights	1:80

Dormitory operations for grades one through eight are encouraged to provide additional staff aides during the time children in the primary grades are dressing and preparing for breakfast and school. Staff ratios on weekends shall be reduced at boarding schools to adjust for those students who go home, according to the above ratio.

(c) Group instruction and discussion session shall be held on various topics at least on a monthly basis, but preferably on a weekly basis. Topics to be presented may be determined by a committee comprised of students, staff, administrators, and parents. These topics shall include discussions of problems or needs that exist at the location and/or community.

(d) Each dormitory facility shall be cleaned daily when in operation to provide a safe and sanitary environment. Student assistance may be utilized; however, the responsibility for the cleanliness, safety, and sanitation of the facility shall rest with the dormitory administrator. Bed and bath linen shall be changed a minimum of once per week. Necessary toiletry items shall be made available to those students who are economically unable to provide them.

(e) Dormitory operations shall have access to clothes washers and dryers. Equipment shall be utilized only for students' clothing. In grades one through six, residential paraprofessionals shall be responsible for the upkeep of clothing. Students in grades seven through 12 shall be responsible for the upkeeping of their own clothing. In grades seven through 12, students shall be allowed to wash and dry their clothing after training is given in using the machines. Contracting for student clothing care may also be utilized under this part.

(f) A system of student accountability shall be established at each residential facility. Minimum requirements of the system shall include an attendance procedure at least four (4) times per normal waking day for grades one through eight and two (2) times for grades nine through 12. However, students in grades seven through 12 may be allowed to have a self check-in system provided that an employee reviews the roster within an hour of each designated check-in time. During sleeping hours, students in grades one through eight shall be checked on an hourly basis; students in grades nine through 12 shall be checked every two (2) hours. At the start of each school day, residential facilities supervisors shall report to the school office which students will not be in attendance. An intra-school pass system shall be developed and implemented.

(g) Students shall be permitted to be released from the dormitory overnight, on weekends, or during vacation periods only when prior written approval is granted by the parent or guardian and only if the local school board adopts a policy governing the conditions of release. Such policy must adhere to the concept that the dormitory/school is acting in *"loco parentis."*

(h) Dormitory facilities shall have a designated room or rooms which shall be utilized as an isolation room(s) for student health care needs. Students isolated in such room(s) shall be checked on a minimum of an hourly basis.

(i) Each dormitory operation shall develop a written procedure for handling emergency situations. Such a procedure shall include names and telephone numbers of the responsible parties to contact in case of emergencies. Situations that shall be considered emergencies include life-threatening medical/health problems, power failures, walkaways, etc.

(j) A tutoring program shall be developed and implemented to assist those students having academic difficulties. Each dormitory operation shall provide a time and place where tutoring, homework, reading, and/or studying can be done for at least one hour daily.

(k) The responsible dormitory supervisor shall be accountable for reporting any hazardous or defective items in the dormitory to the appropriate supervisor and plant manager.

(l) Leisure-time activities shall be provided to dormitory students. These activities may include recreational activities, clubs, arts/crafts, and reading of newspapers and periodicals. Television viewing shall not be considered as structured leisure time unless a scheduled program provides educational benefit.

(m) Lines of communication shall be established with other local social service agencies to assist in the resolution of problems that may extend beyond the confines of the dormitory. These agencies may be State, tribal, or Federal.

(n) Dormitory personnel will receive training in emergency first aid procedures.

§ 36.75 Space and privacy.

The configuration of sleeping space and other living areas will vary according to the grade levels of the occupants; however, sleeping rooms shall provide sufficient space and privacy for the resident students. The following space and privacy

requirements shall be required for dormitories. A dormitory shall be considered at capacity when the addition of one more student would put the school out of compliance with the space standard; and additional students shall not be admitted for residential purposes.

(a) Dormitory facilities for grades one through eight shall have space footage averaging from 40 to 60 square feet per student for sleeping rooms, exclusive of furniture (wardrobe, desks, beds, etc.).

(b) Dormitories housing students who are in grades nine through 12 shall provide sleeping rooms with a per student square footage averaging from 50 to 70 square feet, exclusive of furniture (wardrobe, desks, beds, etc.).

(c) When new dormitories are constructed or existing dormitories are remodeled, sleeping rooms shall be constructed not to exceed a maximum of four students per room for grades one through 12.

(d) Each peripheral dormitory shall have a set of encyclopedias, one dictionary for every ten students (ADM), and ten other general reference materials such as an atlas or periodical subscription.

§ 36.76 Compliance for the National Criteria for Dormitory Situations.

Implementation of the National Criteria for Dormitory Situations shall begin immediately on the effective date of this part. A dormitory is in compliance when it has met and satisfied all the requirements under Subpart H.

(a) The education supervisor(s) or peripheral dormitory supervisor shall report to their supervisor(s) within 45 days after the start of each school term with a compliance report to the local school board that attests to whether a dormitory is in compliance or noncompliance; within 15 days, the compliance report shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(b) The school supervisor or the peripheral dormitory supervisor shall notify in writing each parent or legal guardian of the dormitory noncompliance status within 60 days after the beginning of the school term.

(c) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the dormitory has or has not met all of the requirements.

(2) A specific listing of the requirements that have not been met.

(3) A detailed action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(d) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each dormitory compliance report and shall provide the Director with a detailed report by November 15 each year which shall include:

(1) A list of dormitories indicating those not in compliance.

(2) A detailed statement as to why each school indicated is not in compliance and how it is proposed to reach compliance.

(3) A plan of action outlining what actions the Agency or Area education line officers, as appropriate, will take to assist the dormitories to reach compliance.

(e) In the event a dormitory is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all appropriate levels of school/dormitory administration. Noncompliance may be grounds for dismissal.

(f) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under § 1122 of Pub. L. 95–561, and 25 U.S.C. 2002. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in relation to the criteria established under this section and specific cost estimates for meeting such criteria at each school up to the level required by such criteria.

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

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Monday
September 9, 1985

Part V

Environmental Protection Agency

40 CFR Part 60

Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2865-5]

Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: On September 24, 1984 (49 FR 37548), the Environmental Protection Agency (EPA) proposed to grant, subject to the concurrence by the Governors of the States of Georgia, Michigan, Minnesota, and Missouri, innovative technology waivers, pursuant to section 111(j) of the Clean Air Act, as amended, 42 U.S.C. 7411(j), for topcoat operations at the four automobile and light-duty truck assembly plants. This action grants those waivers. These waivers provide an opportunity to demonstrate the capability of basecoat/clearcoat (BC/CC) topcoat systems to achieve equivalent or greater volatile organic compound (VOC) emission reductions than required by the existing standard of performance for topcoat operations at automobile and light-duty truck assembly plants at lower costs.

EFFECTIVE DATE: September 9, 1985. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication. The issuance of these waivers is based on determinations of nationwide scope and effect. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Under section 307(d)(2) of the Clean Air Act, 42 U.S.C. 7607(d)(2), the Administrator is required to establish two identical rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of each docket is located in Washington, D.C. at EPA's Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy of each docket is located at the EPA Regional Office for the State where the plant is located. The Regional Office locations are listed below:

For Chrysler Corporation's (Chrysler's) Sterling Heights, Michigan, plant and/or Ford Motor Company's (Ford's) St. Paul, Minnesota, plant: Environmental Protection Agency, Region V, Attention: Mr. Gary Gulezian, Docket Number (see Table 1), 230 South Dearborn Street, Chicago, Illinois 60604.

For Ford's Hapeville, Georgia, plant: Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket Number (see Table 1), 345 Courtland Street, NE., Atlanta, Georgia 30365.

For Ford's Hazelwood, Missouri, plant: Environmental Protection Agency, Region VII, Attention: Mr. Charles Whitmore, Docket Number (see Table 1), 726 Minnesota Avenue, Kansas City, Kansas 66101.

The dockets may be inspected at the listed addresses between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying.

TABLE 1. DOCKET NUMBERS

Plant	Docket No.
1. Chrysler—Sterling Heights, MI	A-84-09
2. Ford—St. Paul, MN	A-84-10
3. Ford—Hapeville, GA	A-84-11
4. Ford—Hazelwood, MI	A-84-12

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy or Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On October 5, 1979, pursuant to Section 111 of the Clean Air Act, standards of performance were proposed to limit emissions of VOC's from new, modified, and reconstructed automobile and light-duty truck surface coating operations (44 FR 57792). Final standards were published in the **Federal Register** on December 24, 1980 (45 FR 85410).

Standards of performance under Section 111 are established at levels that reflect best demonstrated technology (BDT). For automobile and light-duty truck topcoat operations, BDT was determined to be the use of low VOC content waterborne coatings applied with the best demonstrated air atomized spray techniques. The standard of 1.47 kilogram VOC per liter (kg/l) of applied coating solids for topcoat operations was based on the use of this coating system. The standard does not, however, require use of waterborne coatings. Any coating system capable of reducing VOC emissions to 1.47 kg/l of applied coating solids may be used. Other methods which could be used independently or in various combinations to achieve the topcoat standard are low VOC content solvent-borne coatings, add-on control devices (e.g., incinerators and carbon adsorbers), and high efficiency coating application techniques.

Trends in Automobile Topcoats

Since the standard was proposed in 1979, the trend in the domestic automobile industry has been to develop and use low VOC content solvent-borne topcoats with improved transfer efficiency, rather than waterborne coatings, to reduce VOC emissions and improve finish quality. Low VOC content topcoats are available for production line use. These coatings have been demonstrated to be of acceptable quality and appearance and, when used in combination with better transfer efficiency and/or bake oven emission control systems (i.e., energy efficient incinerators), will meet the standard.

Since 1979, however, there has been an increase in the effort by the automobile manufacturers to develop BC/CC topcoats for automobiles and light duty trucks. The BC/CC topcoats consist of a relatively thin layer of highly pigmented basecoat followed by a thicker layer of clearcoat. The BC/CC coatings have a more appealing appearance than non-BC/CC topcoat systems and also offer improved chemical resistance and gloss retention. Vehicles coated with BC/CC topcoats are now being imported to the U.S. in significant quantities by both European and Japanese manufacturers. Because of the general appeal and acceptance by U.S. consumers of vehicles coated with the BC/CC topcoats, U.S. automobile and light-duty truck manufacturers claim they must duplicate the performance of this type of topcoat to be competitive.

The BC/CC coatings that are being used in foreign plants contain relatively large quantities of VOC's. If U.S. manufacturers used similar coatings, the only possible method of meeting the existing standard of performance for automobile and light-duty truck topcoat operations would be to use expensive add-on controls. Although U.S. automobile manufacturers and coating suppliers have made progress in developing lower VOC content BC/CC systems, BC/CC systems with VOC content low enough to comply without such add-on controls are not yet commercially available. The automobile

manufacturers and equipment vendors are also developing more efficient application methods for these coatings. Ultimately, this intensive industry development program will permit the automobile companies to meet the topcoat standard without having to use expensive add-on controls.

Requirements of Section 111(j)

Section 111(j) of the Clean Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to enourage the use of innovative "technological systems of continuous emission reduction" for the control of air pollutants. Their intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Clean Air Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of Section 111 for a limited time period provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed innovative system has not been adequately demonstrated;

b. The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

d. The proposed waiver for the specific innovative technological system is not in excess of the number of waivers necessary to ascertain whether or not such a system will achieve the conditions set forth in "b" and "c" immediately above.

Additionally, section 111(j)(1)(B) of the Clean Air Act requires an innolvative technology waiver to be granted on such terms and conditions during the waiver period as the Administrator determines necessary:

a. To ensure emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

b. To ensure proper functioning of the innovative technological system.

Current Waivers

On February 4, 1984, EPA granted innovative technology waivers under section 111(j) of the Clean Air Act to three General Motor Corporation (GM) plants, one Honda of America Manufacturing, Inc. (Honda) plant, and one Nissan Motor Manufacturing Corporation U.S.A. (Nissan) plant. (See **Federal Register**, Vol. 48, No. 5, Friday, February 4, 1983, pp. 5452 through 5456.) Three identical waivers were granted for the GM plants. The waivers allow VOC emissions of 1.9 kg/1 of applied coating solids from the portion of the topcoat operations that use BC/CC coatings. The waivers for the Honda plant and the Nissan plant allow VOC emissions of 3.1 and 2.3 kg/1 of applied coating solids, respectively, from the portion of the topcoat operations that use BC/CC coatings. Non-BC/CC topcoats, under these waivers, are still required to meet the standard at all times.

Waiver Requests

Chrysler submitted a request on February 9, 1984, for an innovative technology waiver under section 111(j) of the Clean Air Act for the topcoat operation at an automobile plant under construction in Sterling Heights, Michigan, until August 31, 1987. The plant was scheduled to begin production by mid-1984. Chrysler claimed that they needed to use BC/CC topcoats on most, if not all, of the cars produced at this plant so that they can compete with both domestic and foreign car manufacturers who are increasingly relying on BC/CC topcoats. The application of oven controls, the use of the lowest VOC content BC/CC coating, and the use of the best control application system available to Chrysler would have resulted in BC/CC topcoat VOC emissions of 1.68 kg VOC per liter of applied coating solids.

Ford submitted a request on February 10, 1984, for an innovative technology waiver under section 111(j) of the Clean Air Act for each new topcoat operation at three of its existing assembly plants until December 31, 1986. The Hapeville, Georgia, plant and the St. Paul, Minnesota, plant were scheduled to start their new topcoat operations at the beginning of 1985; the Hazelwood, Missouri, plant was scheduled to start its new topcoat operation in August 1984. Ford claimed that they needed to use BC/CC topcoats at these plants so they could be competitive with vehicles produced by other domestic and foreign manufacturers. The application of oven control (at the St. Paul, Minnesota, plant only), the use of the lowest VOC content BC/CC coating, and the use of the best control application system available to Ford would have resulted in BC/CC topcoat VOC emissions of 2.45 kg VOC per liter of applied coating solids at the Hazelwood plant, 2.61 kg VOC per liter of applied coating solids at the Hapeville plant, and 2.00 kg VOC per liter of applied coating solids at the St. Paul plant.

Proposed Waivers

The Agency reviewed the waiver requests with regard to the requirements under section 111(j) of the Clean Air Act and concluded that these requests met the requirements of the Clean Air Act. Therefore, the Administrator proposed on September 24, 1984, to grant innovative technology waivers to these four automobile and light-duty truck plants subject to the concurrences of the Governors of the States where the plants are located.

Public Participation

The proposed waivers were published in the **Federal Register** on September 24, 1984 (49 FR 37548). The preamble to the proposed waivers discussed in detail information relating to BC/CC systems and the requirements of waivers under section 111(j) of the Clean Air Act. Public comments were solicited at the time of proposal and interested persons were given an opportuntity to request a public hearing on each of the waivers. No public hearings were requested.

Comment letters were received from an automobile manufacturer and an environmental interest group. The comments in these letters have been considered carefully and, where determined to be appropriate by the Administrator, changes have been made to the proposed waivers. This preamble contains a summary of these comments and the Agency's responses, which serves as a basis for any revisions made to the waivers between proposal and promulgation.

Significant Comments

One commenter, Ford, pointed out that section 111(b)(1)(B) of the Clean Air Act requires 4-year reviews of new source performance standards (NSPS). The commenter also stated that a review of the present NSPS or the development of a separate category for BC/CC coatings is appropriate and necessary for the Automobile and Light-duty Truck Surface Coating Operations new source standard, which was first

promulgated on December 24, 1980. This comment, in effect, concerns the appropriateness of the current standard rather than the appropriateness of the waivers and thus is not germane to this notice.

One commenter, Earth Protector, Inc., requested the Agency to deny Ford's proposed waiver request for the Ford plant in St. Paul, Minnesota, because of the lack of information to support Ford's claim that the proposed BC/CC topcoat system that is to be used in place of the "traditional" single material topcoat system for a portion of the vehicles will not pose an unreasonable risk to public health.

One of the four determinations that must be made before the Administrator can issue a waiver is that the proposed system has been shown to the Administrator's satisfaction not to cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction [section 111(j)(1)(A)(iii) of the Clean Air Act]. To make this determination for this set of waivers, the Agency assessed both total VOC emissions and the emissions of and possible risks associated with individual compounds from topcoat operations using BC/CC systems. Based on this assessment, the Administrator has not found unreasonable risks to public health, safety, or welfare associated with the emissions either from the proposed topcoat operations at this Ford plant or from other plants that have waivers or are being granted waivers under this action.

The general category of compounds affected by the waiver request, VOC's, contribute to the formation of photochemical oxidants that are associated with health and welfare effects. Because of this relationship, VOC's are regulated by the NSPS. The EPA has adopted national ambient air quality standards (NAAQS) for ozone. The NAAQS are based on air quality levels that through their attainment and maintenance protect the public health and welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air (section 109(b) (1) and (2)). Before its reconstruction, the topcoat operation at Ford's St. Paul plant was emitting about 1,600 tons per year of VOC's in an area that is in attainment with the ozone NAAQS. Because this area is in attainment with this NAAQS, there is no Federal requirement for reducing these emissions from the existing facility.

The reconstruction of the topcoat operation at the St. Paul plant has resulted in the topcoat operation being subject to the NSPS. The NSPS, which is a technology-based standard, serves to reduce total emissions of VOC's, thereby lowering ambient concentrations of VOC's from the concentrations that occurred as a result of the 1,600 tons per year of VOC's being emitted before the reconstruction. Under the waiver, emissions from topcoat operations at the plant will range from approximately 800 to 1,150 tons per year, depending on the fraction of all vehicles coated using the BC/CC system.

In the evaluation of the waiver request, the Agency identified (from information obtained from Ford) the specific compounds that could be emitted from topcoat operations using BC/CC systems. Based on this information, up to 41 VOC's (including solvents, monomers, and by-products) could be emitted from topcoat ovens and spray booth exhausts, depending upon which company supplies the coating. At the present time, the only organic compounds listed as being hazardous by EPA are benzene and vinyl chloride. Benzene and vinyl chloride are not among these 41 compounds. (As essentially the same coatings are supplied to all U.S. automobile manufacturers, the Agency believes that the compounds identified are representative of all automobile topcoat operations in the U.S.) A search of available health information was then conducted to identify the potential health effects, if any, that might be associated with exposure to these compounds. The health information obtained is summarized in Docket No. A-84-10, Entry IV-B-24.

In determining whether the 41 potentially emitted compounds pose an unreasonable risk to the public, the Agency considered: (1) The maximum potential ambient concentration of each compound in comparison to occupational limits or exposure levels associated with noncarcinogenic health effects, and (2) the carcinogenicity of the compound. For most compounds, occupational threshold limit values (TLV's) were available. Where TLV's were not available, the Agency identified exposure limits that might reasonably be associated with health effects from available studies or limits recommended by coating suppliers or the raw material suppliers. For each compound for which more than one limit/level was identified, the most restrictive exposure was compared with the estimated maximum ambient concentration.

Ambient Concentrations

A dispersion model analysis performed by Ford for the St. Paul, Minnesota, plant was reviewed by the Agency. (The analysis was performed as required under a permit issued to Ford by the State of Minnesota's air pollution control agency.) The Agency's review of Ford's analysis showed that the dispersion modeling was conducted in a manner consistent with dispersion models normally used by the Agency. Using that dispersion model, the Agency calculated the maximum ambient concentrations that would occur around the plant site for each of the 41 compounds potentially emitted from the spray booths and bake ovens based on coatings provided by two different BC/CC suppliers. In addition, the calculations for the bake ovens were made assuming both normal operation and malfunction of the incinerators.

The results of the modeling (see Docket No. A-84-10, Entry IV-B-25) show that each compound's maximum potential concentration is less than its most restrictive occupational limit by a factor of 350 or more. Occupational limits are designed to protect workers, who are unlikely to be as sensitive as some subsets of the general public such as the elderly, children, and asthmatics. The maximum potential ambient concentrations to which the general public is expected to be exposed are considerably below their most restrictive occupational limits and, in the absence of information to suggest otherwise, there is no basis for concluding that exposures associated with these operations pose unreasonable risks.

Carcinogenicity of the Compounds

The Agency then considered the carcinogencity of each compound. Two of the compounds (formaldehyde and styrene) are suspected human carcinogens. In considering the potential risk of carcinogens, the Agency typically looks at two risk numbers: estimated maximum individual risk and estimated aggregate risk. (The maximum individual risk is the risk of cancer for the person exposed continually for a 70-year period to the highest estimated concentration in the ambient air. The aggregate risk is the estimated number of statistical cancer cases per year among the population if exposed continuously to the modeled concentration.) The Agency first calculated the estimated maximum individual risk for these two compounds. The maximum estimated upper limit individual risks were calculated to be 9×10^{-6} (i.e., about one chance in 100,000 of contracting cancer) for formaldehyde and 9×10^{-8} (about one chance in 10 million of contracting cancer) for

styrene. The maximum estimated individual risk for styrene also is a conservative estimate since this risk estimate is based on the emissions of monomers assuming 100 percent styrene when in fact styrene is but 1 of up to 10 different monomers that could be emitted. If styrene composes one-tenth of the total monomer emissions, then the maximum individual risk associated with styrene would decrease to 9×10^{-9}. Aggregate risk estimates also would be low given the relevant unit risk estimates, the low ambient concentrations, and the number of people residing in the vicinity of this facility.

In summary, the emissions from the topcoat operation using the proposed BC/CC system at Ford's St. Paul, Minnesota, plant, as well as other topcoat operations using BC/CC systems, result in very low ambient concentrations that pose only slight risk to the general public. These slight risks must be weighed against the substantial benefits of the waivers (e.g., compliance with the topcoat standards without the use of expensive, energy-demanding add-on controls). The Agency concludes that the proposed topcoat operations using BC/CC systems do not pose an unreasonable risk to the public in their operation, function, or malfunction.

Earth Protector, Inc., also commented that the language in the proposed waivers may allow the automobile manufacturer to violate other standards that apply to topcoat operations without penalty while the waiver is in effect and requested that language be inserted in the waivers to prevent this from possibly occurring. In making this comment, Earth Protector referred to what they claim to be a similar situation involving a stipulation agreement between a State pollution control agency and a polluter in which the polluter claimed discretionary power to violate standards not specifically included in the enforcement provisions.

In general, EPA does not believe the language in the proposed waivers afford a basis for the potential violation of other applicable standards without penalty as claimed by the commenter. Further, the commenter did not provide any specific information concerning the stipulation agreement. Thus, EPA was not able to compare the two situations in order to evaluate the claimed similarity. The waivers specifically amend the new source standards for VOC emissions from topcoat operations (Subpart MM, 40 CFR Part 60). As such, the waivers do not affect the application, enforcement, or any other aspect of any other standards that are or may be applicable to topcoat operations or any other part of automobile or light-duty truck manufacturing. In addition, the company is required to comply with interim standards and a violation of these interim standards for the BC/CC topcoat operation is enforceable as part of the NSPS. If other standards were intended to be affected, the proposed waivers would have identified those standards as being amended by the proposed waivers, as was done for Subpart MM. Nevertheless, as the intent of the waivers is not to affect the applicability, enforcement, or any other aspect of any other applicable standard and as the language suggested by the commenter would clarify the situation without imposing any additional burdens on either the industry or the Agency, EPA has incorporated in each waiver language similar to that suggested by the commenter.

Last, Earth Protector, Inc., stated that the proposed waiver for the Ford plant in St. Paul, Minnesota, should be rejected because it is unreasonable for the Agency to grant a waiver from the standard in order to allow Ford (and other U.S. automakers) to meet foreign competition.

The commenter misstates the basis for the waivers. In order to grant these waivers, the Administrator, as required by section 111(j)(1)(A) of the Clean Air Act, must determine that:

(i) The proposed innovative technology system has not been adequately demonstrated;

(ii) The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

(iii) The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

(iv) The proposed waiver for the specific technology system is not in excess of the number of waivers necessary to ascertain whether or not such a system will achieve the conditions set forth in "ii" and "iii" immediately above.

In making this determination, the Administrator considers these four requirements only. If any of these four requirements under section 111(j) had been found not to be met, the waivers would have been rejected.

The EPA recognizes that BC/CC improves the quality of topcoats and reduces the cost of compliance with the topcoat standards, and that the use of BC/CC by U.S. topcoat operations will, therefore, improve their competitive position. Indeed, the promise of improvement in quality and reductions in compliance costs are two reasons why BC/CC meets the requirements of section 111(j)(1)(A)(ii).

Summary of the Final Waivers

Chrysler

A waiver is granted to Chrysler for an automobile assembly plant located in Sterling Heights, Michigan. The waiver allows VOC emissions from the portion of the topcoast operations that use BC/CC coatings of 1.7 kg VOC per liter of applied coating solids. The waiver is effective from plant start-up to December 31, 1986.

Ford

Three waivers are granted to Ford for new topcoat operations at existing automobile or light-duty truck assembly plants in Hapeville, Georgia; St. Paul, Minnesota; and Hazelwood, Missouri. The waivers allow VOC emissions from the portion of the topcoat operations that use BC/CC coatings of 2.6 kg VOC per liter of applied coating solids at the Hapeville plant; 2.0 kg VOC per liter of applied coating solids at the St. Paul plant; and 2.5 kg VOC per liter of applied coating solids at the Hazelwood plant. These waivers are effective from start-up of the new topcoat operations to December 31, 1986.

Governor's Concurrences

Honorable Rudy Perpich, Governor of the State of Minnesota; Honorable J.F. Harris, Governor of the State of Georgia; Honorable Christopher S. Bond, Governor of the State of Missouri; and Honorable James J. Blanchard, Governor of the State of Michigan, have concurred with the innovative technology waivers as set forth herein under section 111(j)(1)(A) of the Clean Air Act, 42 U.S.C. 7411(j)(1)(A). Such concurrences are a prerequisite for the granting of innovative technology waivers by the Administrator under section 111(j) of the Clean Air Act. The waivers as set forth herein are hereby granted.

Miscellaneous

In accordance with section 117 of the Clean Air Act, publication of these final waivers was preceded by consultation with Federal departments and agencies.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires EPA to submit to the Office of Management and Budget

(OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information" as defined in the Paperwork Reduction Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This rulemaking was submitted to OMB for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Automobile and light-duty truck manufacturing industry (SIC 3711), Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping.

Dated: August 13, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 is revised as set forth below and the authority citations following all the sections in Part 60 are removed.

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Subpart MM is amended by adding new paragraphs (f) through (i) to read as follows:

§ 60.398 Innovative technology waivers.

* * * * *

(f) *Chrysler Corporation, Sterling Heights, Michigan, automobile assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Chrysler Corporation's automobile assembly plant located in Sterling Heights, Michigan, shall comply with the following conditions:

(i) The Chrysler Corporation shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Sterling Heights assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Chrysler Corporation shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Sterling Heights, Michigan assembly plant, to either:

(A) 1.7 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (f)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(f)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Part, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Chrysler Corporation to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Chrysler Corporation to enforcement under sections 113 (b) and (c) of the Act (42 U.S.C. 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Michigan from imposing upon the Chrysler Corporation any emission reduction requirement at Chrysler's Sterling Heights automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(g) *Ford Motor Company, Hapeville, Georgia, automotive assemply plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in Hapeville, Georgia, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hapeville assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hapeville, Georgia, assembly plant, to either:

(A) 2.6 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (g)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(g)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, postmarked before 60 days after

the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) and the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Georgia from imposing upon the Ford Motor Corporation any emission reduction requirement at Ford's Hapeville automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this automobile assembly plant.

(h) *Ford Motor Company, St. Paul, Minnesota, light-duty truck assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in St. Paul, Minneosta, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the St. Paul assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c), is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the St. Paul, Minnesota, assembly plant, to either:

(A) 2.0 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (h)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(h)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this wavier shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Minnesota from imposing upon the Ford Motor Corporation any emission reduction requirements at Ford's St. Paul light-duty truck assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this light-duty truck assembly plant.

(i) *Ford Motor Company, Hazelwood, Missouri, passenger van assembly plant.* (1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's passenger van assembly plant located in Hazelwood, Missouri, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required under Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hazelwood assembly plant.

(ii) Commencing on September 9, 1985, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified under 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hazelwood, Missouri, assembly plant, to either:

(A) 2.5 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (i)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified under 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(i)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 61101, postmarked before 60 days after the promulgation of this waiver and

annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Missouri from imposing upon the Ford Motor Corporation any emission reduction at Ford's Hazelwood passenger van assembly plant necessary for the maintenance of reasonable further progresss or the attainment of the national ambient air quality standards for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this passenger van assembly plant.

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federal register

Monday
September 9, 1985

Part VI

Environmental Protection Agency

40 CFR Parts 85 and 600

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines; Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 600

[FRL-2860-2]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is currently considering additional options for revising portions of the EPA regulations at 40 CFR 85.1501 *et seq.*, which regulate the importation of nonconforming motor vehicles and motor vehicle engines. Nonconforming vehicles are ones which have not been demonstrated to conform with Federal emission requirements. These additional options reflect EPA's consideration of all public comments received in response to an EPA Notice of Public Workshops issued on November 4, 1983 and the original Notice of Proposed Rulemaking issued on July 21, 1980. EPA intends to hold public hearings to solicit comments on these and all other options which have been proposed. Revisions to the current regulations are needed to improve the administrative efficiency and effectiveness of the EPA program.

DATES: EPA will hold public hearings as follows:

Hearing #1: 9 a.m. EDT, Wednesday, October 9, 1985—Washington, D.C.
Hearing #2: 9 a.m. PDT, Thursday, October 24, 1985—San Diego, California

Persons wishing to provide testimony at the hearings should notify Mr. Durkee as noted below, not later than October 2, 1985 for the Washington, D.C. hearing and October 17, 1985 for the San Diego hearing. Any written comments must be received on or before December 6, 1985.

ADDRESSES: Interested parties are encouraged to participate in this rulemaking procedure by submitting comments to: Central Docket Section (LE-1318) (Attention: EN-79-9), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-79-9 at the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery One, 401 M Street SW., Washington, D.C. 20460, and are available for review during normal business hours (8:00 a.m.–4:30 p.m.). As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

The October 9, 1985 hearing will be held in the North Auditorium, Department of Health and Human Services Headquarters, 330 Independence Avenue SW., Washington, D.C. 20201. The October 24, 1985 hearing will be held at the Holiday Inn Embarcadero, 1355 North Harbor Drive, San Diego, California 92101. Telephone: (619) 232-3861.

FOR FURTHER INFORMATION CONTACT: Stanley B. Durkee, Manufacturers Programs Branch, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-2499.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the "Act"), prohibits the importation of any new motor vehicle or engine (hereinafter "vehicle"), 42 U.S.C. 7522, not covered by a certificate of conformity unless it is exempted by the Administrator of EPA or otherwise authorized jointly by EPA and U.S. Customs Service (Customs) regulations. Current EPA and Customs regulations at 40 CFR 85.1501 *et seq.* and 19 CFR 12.73, respectively, allow the conditional importation of a nonconforming vehicle provided that a bond is posted with Customs and the vehicle is brought into conformity with EPA emission requirements. This may be done either by modifying the vehicle to make it identical to a vehicle certified for sale in the U.S. or by successfully testing the vehicle in accordance with the Federal Test Procedure (FTP) at 40 CFR Part 86. Under the second option, which is more commonly used, some modification is usually necessary before the imported vehicle can pass the FTP (the "modification and testing" approach).

Based on experience gained since these regulations were originally published in 1972, the Agency issued a Notice of Proposed Rulemaking ("NPRM") on July 21, 1980, which proposed and solicited comments on a number of revisions to the existing importation procedures. 45 FR 48812. Subsequently, due to review of the comments received, additional Agency analysis, and proposed Congressional amendments to the Act which would have significantly altered the imports program, EPA delayed final action on the NPRM. In the interim, EPA made several changes to its enforcement procedures and policies designed to reduce the administrative burden of the imports program brought about by the increasing rate of nonconforming vehicles imported each year, and to minimize the burden of the rules in certain special circumstances. These changes allowed the importation by individuals of one nonconforming vehicle at least five model-years old at the time of importation, without having to bring the vehicle into conformity. Such vehicles were required to be for personal use only and not for resale. These policy changes also provided for similar treatment with respect to immigrants, handicapped persons and others experiencing special hardships. 48 FR 16485 (April 18, 1983).

In 1983, EPA continued its evaluation of the proposed revisions to the imports regulations, taking into account changes that had occurred since publication of the NPRM, including an increase in the number of nonconforming vehicles imported annually and allegations of abuse of certain imports procedures. As part of this reevaluation, EPA issued a Notice of Public Workshops on November 4, 1983, to discuss additional issues and options for revising the regulations. 48 FR 50902. Two workshops were held in November and December 1983; transcripts of each have been placed in the public docket for this rulemaking.

Comments submitted at or in response to these workshops have assisted the Agency in further refining the proposed revisions to the imports program. Most of the comments dealt with two major issues associated with the current "modification and testing" approach. The first issue was whether the current regulations are equitable, since they arguably impose less stringent requirements on independent commercial importers [1] of nonconforming vehicles under the "modification and testing" approach than those imposed on original equipment manufacturers or their distributors (hereinafter collectively referred to as OEMs) pursuant to the certification process. *See* 40 CFR Parts 85 and 86. OEMs generally alleged that the regulations are unfair because they result in the incurrence of lower costs of compliance to independent commercial importers, and because they result in importations which cause widespread problems (e.g., warranty claims, parts unavailability for models they do not

[1] The term "independent commercial importers" as used here means importers who do not have a contractual agreement with foreign manufacturers to act as their authorized representatives for the distribution of vehicles into the U.S. market.

sell in the U.S.), which adversely affect their reputations.

Some representatives of businesses associated with independent commercial importers argued that the current regulations were not inequitable, and also suggested that some requirements imposed on independent commercial importers are already more stringent than those imposed on OEMS. For example, independent commercial importers generally must test every imported vehicle to ensure it complies with emission standards, while OEMs are only occasionally subjected to a Selective Enforcement Audit of production vehicles.

The second major issue was the extent to which alleged improper modifications and falsification of data occur under the existing approach. Many commenters addressing this issue alleged that these problems were significant and widespread. Some representatives of independent commercial importers, on the other hand, have claimed generally that such abuses are not as extensive as their opponents claim.

Another important issue that has emerged from the comments is whether independent commercial importers who obtain a certificate of conformity have knowledge of production changes made by OEMs which could have an effect on the emissions performance of imported nonconforming vehicles. This question is relevant when a commercial importer asserts that it has modified its vehicle so that it conforms to an already-certified configuration. If unknown production line changes have been incorporated into the nonconforming vehicle, the certificate of conformity may not reflect the actual configuration of that or any subsequently produced vehicles and such vehicles may not be covered by the certificate.

Finally, to provide further information for use in the reevaluation of the program, EPA, in cooperation with the California Air Resources Board (CARB), conducted a joint program in September and October 1984 to inspect and test a sample of nonconforming vehicles. The sample of twenty-seven vehicles considered in the program utilized statistical sampling techniques and was drawn according to specified criteria from a larger number of vehicles which five test laboratories located in Southern California had reported to EPA to be in conformity at the time they were tested by the laboratories. (At the time of retesting, EPA had not approved release of the obligation on the importation bonds for any of the vehicles.) All but one of twenty-seven vehicles failed the emissions test for at least one pollutant. In many cases, failures were by substantial margins. A description of the program and the results obtained have been placed in the public docket for information and comment.

II. Discussion of Regulatory Revision Options

Based on the comments received and additional Agency analysis, EPA is considering three new options, in addition to those described in the NPRM and the Notice of Workshops. The three options are described below and in Appendices I–III of this Notice. Any of these options, if adopted, could be substituted for the current imports regulations.

While all options, both those outlined in this Supplemental Notice and those described in the NPRM and the Notice of Workshops, are being equally considered, proposed regulatory language is provided only for Options 2 and 3 (*see* Appendix IV) since the essence of Option 1 is simply deletion of the current regulations.

A. Option 1

The first additional option (Option 1) (*see* Appendix I) would prohibit the importation of nonconforming vehicles and would further prohibit independent commercial importers from obtaining certification. Only vehicles previously certified by OEMs could be imported by OEMs, independent commercial importers or individuals.[2] Most OEMs and the State of California proposed this option in response to the November 4, 1983, Notice of Public Workshops and identified several grounds for its consideration. For example, many of these commenters alleged that many businesses engaged in the importation, modification and testing of nonconforming vehicles are unreliable. Several OEMs and the California Air Resources Board (CARB) submitted information on nonconforming vehicles which had been purportedly modified and tested and, subsequently, visually inspected by dealers during the course of routine repair work or, in some cases, retested. This information appears to show that a significant number of such vehicles were either not modified or inadequately modified. It was suggested that if cars are improperly modified and tested under the present program, it is unlikely that they will be properly modified under a program that requires imported vehicles to be modified so as to be covered by a certificate of conformity.

A second reason for EPA's consideration of Option 1 is that comments were received which allege that independent commercial importers often lack sufficient knowledge to assure that modified vehicles comply with the requirements of a certificate. CARB and some OEMs claimed that independent commercial importers are not notified by OEMs of "running changes," i.e., those changes in configuration, equipment, calibration, and so forth, which may be made by a manufacturer in the course of production of a model line or engine family and which may have an effect on emission performance. The current certification regulations, at 40 CFR 86.079–33, require original equipment manufacturers to notify EPA of "running changes". This reporting requirement is essential in order for the Agency to be able to determine whether the vehicle, as altered, still conforms, in all material respects, to the description of the vehicle or engine in the application for certification. If independent commercial importers are unaware of running changes made on the production line vehicle by foreign OEMs, there is no way of knowing whether the vehicle as modified by the importer will meet the requirements of the importer's certificate.

Some OEMs also commented that the differences between U.S. and foreign versions of their models are so great that vehicles of certain foreign model lines cannot be successfully modified to ensure their compliance with emission standards for their useful lives. The Agency also is concerned that independent commercial importers generally lack access to specifications, design settings under varied operating conditions and other engineering information and data required to match engine output and emission control system characteristics, particularly durability. Since OEMs have control over the production process, they may coordinate a vehicle's engine design with the vehicle's emission performance while simultaneously considering fuel economy, driveability and emission deterioration. In contrast, independent commercial importers who install emission control components on a vehicle engine which is not originally designed for compliance with U.S. emission standards, may adversely affect fuel economy, driveability or emission control durability of the vehicle. Such adverse effects may also encourage vehicle purchasers to remove or disable emission control components

[2] Under the authority of 40 CFR 85.1509, the catalyst and other emission control parts may have to be replaced on some certified vehicles driven outside the United States prior to importation if unleaded gasoline is not generally available where the vehicle was driven.

causing severe emission deterioration. Vehicles which are not emission-durable for their full useful life should not be certified.

EPA has historically considered independent commercial importers as manufacturers under section 216(1) of the Clean Air Act. As such, they have been considered eligible to apply for certification. However, some commenters have asserted that the definition of manufacturer in section 216(1) of the Act was not intended to apply to independent commercial importers. It has also been suggested that the Agency could prohibit independent commercial importers from obtaining certification if sufficient information exists to demonstrate that it is unlikely that vehicles modified by persons other than OEMs would comply with the requirements of the Act throughout the vehicles' useful lives.

EPA seeks comments and supporting information and data on these legal and technical issues. In particular: (1) What are the differences between U.S.-certified models and their uncertified foreign counterparts? (2) Can emission control systems be successfully developed by independent commercial importers for certain foreign models that will maintain compliance for the useful lives of those vehicles? (3) Are independent commercial importers informed of all emission-related running changes and, if so, by what means? (4) What changes, if any, are made in the modifications or components applied by independent commercial importers to correct the adverse effect of such running changes on emissions? (5) Are running changes likely to adversely affect the durability of emission control systems installed by independent commercial importers, thereby causing noncompliance within the vehicles' useful lives? (6) What evidence exists that imported nonconforming vehicles, as modified under the current "modification and testing" option, are capable of meeting applicable emission standards throughout their useful lives? (7) What evidence exists that a substantial number of vehicles are incapable of complying with emission standards due to improper modifications, rather than to subsequent tampering unrelated to the modifications? (8) What evidence exists that a substantial number of vehicles are being tampered with after modification and testing due to dissatisfaction with the modification? (9) If such evidence exists, is it sufficient to support a determination that independent commercial importers as a class should not be allowed to certify? (10) Under section 206 or 216(1) of the Clean Air Act, may the Agency prohibit independent commercial importers from applying and/or obtaining certification? (11) Finally, what would be the practical effects of Option 1 which would eliminate independent commercial importers from the commercial importation market with respect to vehicles not certified by OEMs?

B. Option 2

Option 2 (*see* Appendix II) would provide that a nonconforming vehicle may only be imported if it belongs to a class of vehicles for which a certificate of conformity has been obtained. Furthermore, such vehicles could be imported only by the possessor of this certificate. Certificate holders would bear responsibility for compliance of these vehicles for their useful lives. No nonconforming vehicle, except (1) those exempted for purposes of testing, pre-certification or other reasons specified in the regulation, and (2) those covered originally by a certificate of conformity, would be admitted until a certificate is granted for that vehicle class. Additionally, each certificate of conformity issued under this option would impose a condition that no vehicle would be covered by the certificate unless it is modified according to the specifications in the application for certification. In general, such vehicles must also be tested according to the FTP to demonstrate conformity to Federal standards within 120 days of entry, such test results to have been derived at an emissions laboratory that is recognized by EPA as capable of performing the FTP.

It is not intended that certificate holders be required to actually own all of the vehicles which they import, modify and test and for which they bear responsibility. Certificate holders could make arrangements with individuals who have purchased vehicles overseas to take responsibility for such vehicles. These vehicles would also be part of the certificate holder's "production line," and the certificate holders would be responsible for complying with requirements identical to those specified in the Act for other certified vehicles. Certificate holders must explicitly agree to these requirements as a condition of approval by EPA of final admission of the vehicle into the United States.

Independent commercial importers who hold such certificates would be required to store each vehicle for a period of fifteen (15) working days following notification to EPA of modification and/or testing to provide the opportunity for EPA confirmatory testing and inspection. EPA inspections could occur at any time. Many will focus only on examining records and vehicles while others can be expected to require re-test of a reasonable number of vehicles (that is, no more than might be expected in a Selective Enforcement Audit, *see, e.g.*, 40 CFR 86.607). Moreover, such certificate holders would have to comply with all the requirements currently imposed on traditional manufacturers by the Act, the Energy Policy and Conservation Act, 15 U.S.C. 2000 *et seq.* and the Energy Tax Act of 1978, 26 U.S.C. 4064, including the provisions for maintenance instructions, warranties, recall, emission labeling, fuel economy labeling, Corporate Average Fuel Economy (CAFE) requirements, and the "gas guzzler" tax.

If Option 2 is adopted, EPA would intend to modify its "small volume manufacturer" certification regulations at 40 CFR 86.084–14, to provide, among other requirements, that vehicles imported under this option be demonstrated to possess sufficient durability to comply with emission requirements for their useful lives. These regulations would be the subject of a separate rulemaking.

Salient features of the Option 2 certification procedures include a requirement applicable only to independent commercial importers that, unless the OEM agreed to notify the certificate holder of all running changes that could affect emissions, vehicles would have to be individually emission tested and/or inspected by the importer within 120 days of entry (for a more detailed discussion, see Section II. B. (1) below).

Due to the stringent attributes of this certification option, including the potential for revocation of certificates, EPA is considering the general elimination of the requirement for an EPA obligation on the Custom Service bond for imported nonconforming vehicles, except for certain exempted vehicles, including "test" or "pre-certification" vehicles. Eliminating the bonding requirement in most cases would reduce importation costs for the independent commercial importer and lessen the administrative burdens of EPA and Customs in overseeing the program. It would also enable the Agency to concentrate its efforts on the certification process [3] and enforcement

[3] The current small volume certification regulations (40 CFR 86.084–14) provide that EPA may conduct emission tests on prototype or test vehicles already tested by the manufacturer during the certification process. EPA intends to perform confirmatory tests on prototype vehicles, in

Continued

of the other requirements of the revised imports program.

Other salient features of Option 2 are as follows:

(1) Running Changes

This option would require certificate holders to provide assurance to EPA on each individual vehicle that any changes to the certified configuration that may have been made by the original equipment manufacturer will not cause the vehicle to exceed emissions standards. Such assurance could be provided in any of the following ways:

(i) through modification in accordance with the provisions of the certificate and presentation to EPA of an enforceable (i.e., contractual) agreement with the original equipment manufacturer which requires the OEM to provide to the independent commercial importer information concerning running changes to vehicles not originally built for the U.S. market according to the procedures of 40 CFR 86.079–33 and actual receipt by EPA of notification of those running changes by the independent commercial importer along with documentation of their effects on emissions;

or (ii) through modification in accordance with the provisions of the certificate and successful completion of an FTP test on each vehicle within 120 days of entry. In order to ensure the durability of these vehicles, emission results on each FTP tested vehicle shall be adjusted by the deterioration factor used by the independent commercial importer during certification and such adjusted results shall comply with applicable standards;

or (iii) through modification in accordance with the provisions of the certificate and successful completion of an FTP test on every third vehicle imported under the certificate. In each case, emission results shall be adjusted by the deterioration factor and such results shall comply with applicable standards. If this option is chosen, the certificate holder must also verify that each emissions-related part number on each vehicle that is *not* FTP tested is identical to the part number used in the certification vehicle or which appears in the application for certification. (Applicable emission-related parts shall be those appearing on a list to be issued by EPA.)

EPA would require that the application for final entry include reports on every FTP test conducted on each vehicle. Should the vehicle be unable to pass a second FTP, the certificate holder's application should report calibration changes it has made to ensure that the vehicle does conform with Federal emission standards. Such changes, if approved by EPA, would constitute approved "running changes" which then must be made on all subsequent vehicles modified in accordance with the certificate. In all cases, the "15 day hold" period would be in effect such that should EPA disapprove the application, final entry would be denied.

EPA invites comments on these alternatives as well as suggestions of additional alternatives which address the problems posed by running changes. In particular:

1. How many running changes are made annually by each OEM on those models not manufactured to comply with U.S. emission standards? To the extent possible, a description should be provided of each such running change made during the 1982, 1983, 1984 and 1985 model years including a quantitative estimate of the impact of the running change on exhaust and evaporative emissions.

2. How many independent commercial importers are informed of running changes in engine configurations? To the extent possible, a description should be provided of the source of the information and, where applicable, what accommodations are made in light of any running changes in the installed emission control systems.

3. What is the appropriate amount of FTP testing of individual vehicles which should be required in order to address the problems posed by running changes?

(2) Inspection, Testing and Recordkeeping

As discussed above, in order to provide additional assurance that the imported vehicles are properly modified and tested, EPA anticipates that after each vehicle is modified and has been demonstrated, where appropriate, to be in compliance with standards in accordance with the FTP, certificate holders would be required to hold *each* vehicle for 15 working days to allow inspection or testing by EPA.

EPA would reserve the right to have any retesting conducted at either the certificate holder's facility or an EPA-designated testing facility, with transportation and testing costs to be borne by the certificate holder. Additionally, the certificate holder would be required to maintain records which provide parts identification data associated with each emission control system installed and demonstrate that the emission control system was properly installed and that each vehicle was tested, where appropriate, in strict accordance with the FTP. Such records would be available for inspection by EPA and be supplied to the Agency upon request. These recordkeeping requirements would enable EPA, among other things, to ensure that the correct test settings were used during the FTP conducted by the independent commercial importer and to compare its re-test results with the results of the original FTP. The existence of any discrepancies found by this comparison may indicate the need for additional vehicle inspection, testing or other action by EPA. Furthermore, any vehicle tested by EPA which does not conform to applicable emission standards will not be covered by the importer's existing certificate of conformity and will be denied final entry.

(3) Sanctions

To encourage proper and competent modification and testing of vehicles to be brought into conformity with the provisions of a certificate, several sanctions are available under sections 206 and 207 of the Act. Certificate holders who have a significant number of vehicles which fail an inspection may have their certificates suspended or revoked. Vehicles of the same engine family experiencing such significant failures which have already been formally entered may also be subject to recall. Other grounds for the suspension or revocation of certificates may include, among others, fraud in any aspect of the importation process, the use by a certificate holder of a testing facility that has not been found qualified by EPA or improper testing or reporting procedures. Failure to allow EPA inspectors access to records, facilities and the actual testing process may also result in the suspension or revocation of a certificate. An opportunity for a hearing will be provided before such Agency action occurs. In addition to these sanctions, failure to comply with any provision of these regulations may subject the certificate holder to penalties provided in section 205 of the Act.

(4) Laboratory Requirements

To further ensure competent importation practices, EPA is proposing to codify and strengthen the requirements for laboratories which perform the Federal Test Procedure (FTP) for imported vehicles. Only laboratories which meet certain criteria, including having proper equipment, staffing, and a demonstrated ability to

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accordance with § 86.065–29(a)(2), of certificate holders who are independent commercial importers in order to assure that the emission control systems applied by these importers are capable of compliance with appropriate emission requirements and are durable.

perform the FTP accurately, will be permitted to submit test data in the certificate holder's application for final admission of each vehicle. In addition, the laboratory must agree to periodic EPA inspections during which an EPA representative may inspect equipment, records, and vehicles, may observe the laboratory perform an FTP and may require the laboratory to perform an FTP. EPA will continue to maintain a list of laboratories shown to be qualified and only test results from laboratories on that list will be accepted. Any change in the laboratory's capability to perform the FTP or any fraud or misrepresentation by the laboratory involving information submitted to EPA may result in its removal from the list. Notice and opportunity to be heard will be given to a laboratory before any final decision to remove it from the list. In no case will any action against a laboratory relieve a certificate holder of liability for the accuracy of the test results or for the emission performance of the vehicles for which it is responsible.

(5) Additional Requirements

The certificate holder will be responsible for providing maintenance instructions, warranties and recall repair and for paying gas guzzler taxes and CAFE penalties either under applicable laws or under these regulations (see discussion under "Option 3, Other Requirements," below).

EPA is concerned that *all* vehicles, including those modified overseas, imported by independent commercial importers comply with the requirements of the imports regulations which are the subject of today's notice. In order to ensure compliance with these regulations, EPA is proposing amendments to its emission labeling regulations at 40 CFR 86.082–35. In this way, Customs Service inspectors at U.S. ports of entry will be able to distinguish between vehicles imported by OEMs and vehicles imported by independent commercial importers which are subject to the requirements of the imports regulations.

The Agency believes that questions 1–10 discussed above in connection with Option 1 are equally applicable to Option 2 and thus, the Agency specifically solicits comments on them as they relate to Option 2.

C. Option 3

Option 3 (*see* Appendix III) would permit entry both to vehicles which will be eventually modified so as to be covered by a certificate of conformity and to a relatively small number of vehicles which will not be covered by a certificate but will be modified and tested to demonstrate compliance with Federal emission requirements. This option provides that for the latter vehicles, a new modification/test (mod/test) procedure that meets EPA concerns previously expressed in this notice may be appropriate for certain models with such a low aggregate volume that the burden may be too great for any person to obtain a certificate of conformity.

The option would retain the basic institutionsal framework of Option 2 in that only possessors of certificates of conformity could import nonconforming vehicles not covered by a certificate and they would bear responsibility for compliance of these mod/test vehicles with emission standards for their useful lives.[4] A certificate holder would be able to import mod/test vehicles of any age but only during the production period described in one of the certificate holder's certificates of conformity. Because the potential exists that mod/test vehicles not covered by a certificate will be different from each other and from certified vehicles, the option contemplates retention of the current bonding requirement for these vehicles. However, the current policy of mitigating penalties on bonds in some cases would be eliminated and failure to bring a vehicle into conformity would lead to full forfeiture of the bond.

By limiting imports of mod/test vehicles to certificate holders, EPA believes that the emission control expertise and the fechnology demonstrated as a result of successful completion of the certification process can be transferred to the task of modifying mod/test vehicles not covered by a certificate. The expected result would be improved emission control system designs for mod/test vehicles as well as utilization of emission control parts with improved durability characteristics. This arrangement would also provide a stronger incentive for reliability since the certification holder must be responsible for modifying and testing the non-certified vehicle properly or face the prospect of exporting it or forfeiting the entire bond on the vehicle. In addition, as discussed in a later section, a certificate holder that is found to be modifying and testing vehicles that do not meet the emission requirements would incur the risk of being denied the continued privilege of importing mod/test vehicles and, possibly, the risk of being denied certificates in the future for any vehicles.

[4] Under these regulations, useful life is measured from the date of sale if the vehicle is owned by the certificate holder and from date of Customs release if not owned by the certificate holder.

This option would contain two sets of program requirements. The regulatory requirements applying to vehicles which will be modified so as to be covered by a certificate of conformity are identical to those specified in Option 2 and will not be repeated. Similarly, the laboratory requirements proposed under Option 2 would apply under Option 3 as well. The regulatory requirements applying to mod/test vehicles would represent a significant departure from the current modification/testing program in that they, like Option 2, would address various EPA concerns regarding enforcement, equity and durability of emission controls. The new modification/test procedure would not be available for vehicles on a "not qualified for modification/test" list of vehicles issued by EPA.

Vehicles which are eligible for the new mod/test procedure would be required to comply with standards in effect at the time such vehicles are modified. This provision will further ensure consistency between the requirements for mod/test vehicles and the requirements for certified vehicles, which must meet standards in effect at the time such vehicles are modified in accordance with the provisions of a certificate. Under the modification and testing program currently in effect, EPA requires that vehicles must comply with standards in effect at the time of original manufacture. For example, a vehicle originally manufactured in May 1975 currently has only to meet 1975 EPA standards regardless of when it is modified. Under the new mod/test provision of Option 3, the vehicle, if modified in 1985, would have to meet 1985 standards. EPA believes that this change will simplify and facilitate the administration and enforcement of Option 3.

EPA recognizes that this change in model year designation may present particular problems for significantly older model year vehicles. Therefore, EPA solicits comments on how older model year vehicles should be treated under these new imports regulations.

(1) EPA List of Vehicles "Not Qualified for Modification Test"

The EPA list would be revised annually and would be based primarily on historical data for the prior one year period ending June 30 of the year each list is issued. (These data are and will be collected normally by EPA's Imports Program.) The list would be issued in the **Federal Register** no later than September 1 of the same year and will be effective on January 1 of the subsequent year for that calendar year.

EPA would provide copies to each certificate holder, the U.S. Customs Service and other interested parties. The list would include two categories of models.

The first category would include all models for which certificates have been issued to date to OEMs or to independent commercial importers. Once on the list as a certified model, the model could not be imported under the modification/testing program even if the holder(s) of certificates of conformity for that model chose not to import it or if the certificate, for whatever reason, became invalid during the period.

EPA has not included any provision for removal of a model from the "not qualified for modification test" list because EPA is concerned that such a provision will result in the undermining of the certification program and an unacceptable administrative burden for EPA. However, EPA welcomes comments on the make-up of the list and, specifically, the provision that no model will be removed from the list once it is placed on the list.

The second category would include models[5] for which no certificate exists and whose aggregate importation volume as computed by EPA for the July 1–June 30 historical data period exceeds 60 vehicles. (Exempted vehicles would not be included in the aggregation calculation.) Sixty vehicles the minimum number of vehicles that is estimated in EPA's Regulatory Flexibility Analysis (RFA) as needed to amortize certification costs for an imported nonconforming vehicle without having a significant impact on sales. The limit of 60 vehicles, therefore, is high enough to provide a reasonable expectation that an entity would seek to certify vehicles within a model designation and yet low enough not to undermine the certification program for other vehicles. Having exceeded the limit, if the model is not subsequently certified, the model would be prohibited from entering under the mod/test procedure in the following years.

[5] The term "models" as used here has a broad and very special meaning and should not be confused with other uses of the term in the Act. For purposes of the list, when considering models for which a certificate does not exist, the term "model" would refer to those vehicles which are identical with respect to the (1) designation given by the original equipment manufacturer, (2) engine displacement (within a 10 percent range), and (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel). For example, all gasoline fueled Mercedes 500s regardless of weight or fuel economy characteristics would be considered within one model. EPA will make no attempt to group vehicles more narrowly since this has potential for abuse and is likely to be too complicated to be administratively feasible.

EPA is also considering various means for addressing the situation posed by models which have been introduced only since the historical data was compiled and thus do not appear therein. One idea is imposing a quota of 10 such vehicles on each individual certificate holder. In this way, the total number of the imports for such vehicles for the year under modification/test would be very limited. Such a program, however, may be difficult to administer. EPA therefore, requests comments on how to deal with these "new" models.

(2) Requirements for Emissions Testing and Durability

Certificate holders would be required to successfully emissions test each mod/test vehicle in accordance with the Federal Test Procedure within 120 days of entry. As previously stated, the fact that only certificate holders could import mod/test vehicles would itself be expected to increase the probability of the proper design and installation of emission systems using parts that are identical to those used on certified vehicles and, therefore, are more likely to be durable. In order to further assure the durability of the emission control systems of each of these vehicles, the emission test results on each vehicle would have to be adjusted by a deterioration factor assigned by EPA and such adjusted results shall comply with applicable standards. Moreover, the certificate holder would be required to furnish EPA an attestation, signed by a professional engineer (P.E.) with emission control experience, that the vehicle's emission control system is durable for its useful life. Also, if the certificate holder decides not to use the identical parts for which he has received certification, he must furnish EPA a report for each such vehicle. The report must be signed by a P.E. with emission control experience and must provide analytic evidence that such parts are durable over the period of useful life. Such analytic evidence must be approved by EPA prior to receipt of the application for approval of any individual vehicle for final entry into the United States.

(3) Requirement for "Hold" of Mod/Test Vehicles Until Bond Release

Certificate holders who import mod/test vehicles would be required to store each vehicle until release of the bond obligation by Customs. Besides ensuring compliance with the existing prohibition against use or sale of the vehicle before bond release, this provides an opportunity for EPA confirmatory testing and inspection.

(4) Other Requirements

Certificate holders who import mod/test vehicles would be required to comply with requirements similar to those imposed on them for vehicles covered by certificate of conformity, such as the provisions for maintenance instructions, warranties, recall, and emission labeling. Additionally, special inspections in lieu of some type of assembly-line audit, as described below, are envisioned. Compliance with all of these requirements, including all those that may be imposed under the Energy Policy and Conservation Act and the Energy Tax Act of 1978, together with a degree of durability assurance previously described, will likely address EPA's concerns for equity and emissions durability over the vehicles useful life.

(a) *Maintenance Instructions.* Certificate holders would be required to furnish for each vehicle not covered by a certificate, written instructions for the maintenance and use of the vehicle by the owner or purchaser as may be reasonable and necessary to assure the proper functioning of the emission control system. A copy of such instructions should be submitted to EPA, with each mod/test submittal and should provide an attestation that such instructions have been provided to the vehicle owner or will be provided to the vehicle purchaser if the vehicle owner is the certificate holder. The instructions should not contain requirements more stringent (i.e., more frequent maintenance) than those specified in § 86.087–25. Repair procedures should be in sufficient detail and clarity that the average automotive mechanic can maintain the vehicle. Certificate holders should furnish with each vehicle a list of the added emission control or related parts and the OEM's emission related parts.

(b) *Warranty.* Certificate holders would be required to provide two warranties for imported mod/test vehicles identical to those required by section 207 (a) and (b) of the Act for certified vehicles. These warranties would be transferable to each owner of the vehicle for the time periods specified. They would be insured by a mandatory service insurance policy underwritten by an independent insurance company. The warranty period would begin on the date the vehicle is delivered to its first purchaser (or owner) in the United States and must provide that in the absence of a certificate holder's repair facility being reasonably available (i.e., within 50 miles), warranty repairs can be performed anywhere. Certificate holders

will submit copies of the warranties to EPA with the application for final admission of the mod/test vehicle. Additionally, the application will provide an attestation that the warranties have been provided to the owner or will be provided to the first ultimate purchaser, and subsequent purchasers upon request.

The first warranty would be an emission control and emission related part defect warranty, identical to that required of certified vehicles by section 207(a) of the Act. The warranty would be required to cover all emission related (e.g., fuel injection system) and emission control parts regardless of whether they were furnished initially by an OEM. The scope of coverage would be determined by reference to section 207(a) of the Act and any guidelines EPA might issue pursuant to that section. Parts installed under the warranty should be of equivalent quality to those originally installed by the OEM or the certificate holder. Since the section 207(a) warranty is a defect warranty, improper maintenance or use of the vehicle would not automatically be cause for denial of a claim. Proof that improper maintenance caused the malfunction, however, would disprove a defect.

The second warranty, identical to that required of manufacturers by section 207(b) of the Act, would be a performance warranty requiring that if a noncomformity is identified in a properly maintained and used vehicle as part of an EPA approved Inspection and Maintenance test during its useful life which results in the vehicle owner having to bear any penalty or other sanction under local, state or Federal law, then the certificate holder would be responsible for remedying the cause of the test failure. This would be done at no cost to the owner; except that if the vehicle has been in operation for more than 24 months or 24,000 miles, the certificate holder would be responsible to remedy only those nonconformities resulting from the failure of "primary emission control parts." Primary emission control parts will be determined by reference to section 207(b) of the Act and the regulations promulgated thereunder, including the advisory parts list, and will cover added parts to the same extent as original parts. Proper bases for warranty denial will be determined by reference to section 207(b) of the Act and the regulations promulgated thereunder at 40 CFR 85.2100 *et seq.*

(c) *In-Use Emissions Compliance.* Certificate holders who import mod/test vehicles would be required to maintain and to provide to EPA upon request a current list of all owners of mod/test vehicles, for which they are responsible. (As with other in-use vehicles, EPA may seek to inspect or test these vehicles at any time during the useful life of the vehicles. Certificate holders would be expected to pay for the costs associated with any repairs needed for vehicles which fail to conform in use and to bring such vehicles into conformity with emission requirements. In addition, the certificate holder will be asked by EPA to explain the failures of vehicles to meet standards. When deemed appropriate by EPA (see discussion in II.C.(5) below), the certificate holder will be denied the privilege of continuing to import such vehicles by placement of its name on a list, discussed in a later section, of certificate holders ineligible to import such vehicles.

(d) *Special Inspections Prior to Final Entry.* Certificate holders of mod/test vehicles will be subject to having such vehicles inspected and retested during the 120 day conditional importation period. EPA would reserve the right to have any retesting conducted at either the certificate holder's facility, an EPA operated laboratory or an EPA designated testing facility, with transportation and testing costs to be borne by the certificate holder. In cases where a significant number of vehicles imported by a certificate holder fail to comply with emission requirements, the certificate holder may be placed on a list, discussed in a later section, of certificate holders ineligible to import such vehicles. Certificate holders will be responsible for providing repairs to all vehicles and may forfeit their importation bonds should vehicles not be repaired.

(e) *Emission Labeling.* Certificate holders would be required to provide a special emissions label for each mod/test vehicle that would duplicate the information contained on the label to be affixed on certified vehicles, as required by § 86.082–35. However, the label would clearly state in bold letters "This vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program." The label will include the certificate holder's address and a telephone number where it may be reached. The certificate holder would be required to submit a copy of the label with each vehicle's application for final admission and attest that it had been affixed to the vehicle.

(f) *Fuel Economy Labeling.* Certificate holders would be required to treat each mod/test vehicle as a separate model and perform a "highway fuel economy test" as described in 40 CFR Part 600 as part of the emissions test on each vehicle so that fuel economy data can be generated.[6] Such data will be used to determine fuel economy estimates incorporated on a fuel economy label, according to 40 CFR Part 600.

(g) *Gas Guzzler Tax.* The Energy Tax Act of 1978, 26 U.S.C. 4064, imposes a gas guzzler tax on the sale of new model year vehicles whose fuel economy fails to meet certain statutory levels. Certificate holders should comply with any applicable gas guzzler tax as determined by the Internal Revenue Service.

For vehicles imported under the modification and testing provision or under several of the exemptions (such as testing or hardship), fuel economy data must be generated in accordance with the provisions of 40 CFR Part 600, Subpart D. This data will be supplied to the Internal Revenue Service (IRS) to enable them to collect the gas guzzler tax. In order to facilitate this collection, importers will be asked to supply their taxpayer identification number whether it is an individual's social security number or a business' tax identification number. Because the IRS defines importer differently than EPA, in some cases certificate holders will be required to furnish some vehicle owners with IRS forms for payment of the gas guzzler tax.

(h) *Corporate Average Fuel Economy (CAFE).* Certificate holders should comply with any applicable CAFE requirements as required by the Energy Policy and Conservation Act, 15 U.S.C. 2000, *et seq.*, and as determined by the U.S. Department of Transportation.

(i) *Inspection, Reporting and Recordkeeping Requirements.* The basic inspection, testing and recordkeeping requirements for mod/test vehicles would be similar to those required of vehicles to be modified so as to be covered by a certificate of conformity. Each certificate holder would be required to promptly notify EPA after completion of modification and testing of each vehicle and compliance with other requirements described above. Each vehicle would be required to be stored until release of the bond obligation to satisfy section 203(a)(1) requirements and to allow EPA inspection. In addition, certificate holders would be required to retain

[6] This test is performed on a dynamometer and simulates a mixture of city/"non-city" driving. Segments corresponding to different kinds of rural roads and interstate highways are included. The test simulates a 10 mile trip and averages 48 mph. The test is run from a hot start, and has very little idling time and no stops (except at the end of the test).

detailed records on each vehicle for a period of six years following the date of release of the bond obligation on the vehicle by Customs. Such records will include parts identification data associated with each emission control system installed and copies of all documentation associated with conduct of the FTP (e.g., driver's trace, instrument traces, etc.).

Additionally, the certificate holder would be required to maintain records which demonstrate that the emission control equipment for mod/test vehicles was properly installed, including recording of all emission parts identification data, and that each vehicle was tested in strict accordance with the FTP. Copies of all documentation associated with such records would be available for inspection by EPA and be supplied to the Agency upon request. These recordkeeping requirements would enable EPA, among other things, to ensure that the correct test settings were used during the FTP conducted by the independent commercial importer and to compare any re-test results with the results of the original FTP. The existence of any discrepancies found by this comparison may indicate the need for additional vehicle inspection, testing or other action by EPA.

(5) Sanctions

Certificate holders who fail to ensure that the mod/test vehicles which they import comply with the requirements described above would incur several risks. EPA would be able to deny certificate holders who improperly modify and test vehicles the privilege to import, modify or test such vehicles for a period of not less than three years from the date of notification by EPA of such failures. Certificate holders determined to be ineligible for importing nonconforming vehicles for modification/test would be placed on a list prepared by EPA and updated as needed. The list would be distributed to the public as EPA would deem appropriate. Criteria for placement on the list would include:

(1) Fraud in the importation, modification or testing of the vehicles, or

(2) Failure of a significant number of the certificate holder's vehicles to pass required re-tests or EPA inspections, or

(3) Failure of the certificate holder to use a qualified laboratory and/or the failure of a vehicle to be emissions tested in accordance with EPA requirements.

Placement on the list may be supplemented by other sanctions depending on the severity of the problem. For example, incidents of fraud, use of inadequate testing facilities as discussed in section II.B.(4), gross incompetence or the failure of a significant number of the certificate holder's vehicles could result in possible suspension or revocation of the certificate(s) currently held by the certificate holder. Moreover, such incidents could result in rendering the certificate holder ineligible for future certificates.

Prior to any final action by the Administrator under this section, notice and an opportunity for a hearing will be given the certificate holder. (Failed vehicles, however, still must be remodified and successfully tested, or destroyed or exported in accordance with 19 CFR 12.73.) The protection given the importers will be equivalent to that given other certificate holders under § 86.613 regarding the suspension or revocation of certificates in non-import situations.

III. Exceptions, Exemptions and Exclusions

A. Five Year-Personal Use Provision.

Exceptions under the current imports enforcement policy would be considerably narrowed under either Option 1, 2, or 3. The Agency would eliminate the current enforcement policy which permits a first-time individual importer to import a vehicle at least five model years old for personal use. That policy was implemented in order to reduce the administrative burden on the Agency, particularly the review of test documentation, and to mininize the hardship to private individual importers unfamiliar with the imports requirements. However, test documentation would not exist under Option 1. Furthermore, Options 2 and 3 anticipate that the certificate holder will retain such documents and would not generally require an EPA obligation on an import bond. Therefore, the "five year personal use" policy would no longer be necessary to reduce the Agency's paperwork burden. Moreover, in light of the widespread attention and publicity given to imports of non-conforming vehicles in recent years, it is reasonable to assume that fewer individuals are unfamiliar with the imports rules. The Agency has also received numerous complaints that individuals are improperly importing vehicles under EPA's "five year" policy. For example, there are allegations that individuals and businesses have been importing vehicles by fraudulently using people's names and then selling the vehicles to others. Thus, the policy poses a number of enforcement problems. Finally, the increasing number of all nonconforming cars entering the country presumably increases the adverse air quality impact from that proportion which are at least five model years old and, therefore, never modified to comply with emission requirements. For these reasons, EPA believes that the "five year personal use" provision would no longer be appropriate in the revised imports program.

EPA has considered the matter of providing a personal use exemption for vehicles older than five model years. However, even older vehicles represent a substantial percentage of nonconforming imports and would still present the same administrative and enforcement problems discussed above. For example, EPA estimates that over 25% of the vehicles currently imported under the five model year personal use provision are ten model years old or older. Even so, EPA invites comments on whether a personal use exemption based on the age of the vehicles ought to exist and, if so, what would be the appropriate constraints of such an exemption.

B. Nonresident Policy Provision

Similarly, the current "nonresident" policy provision would be eliminated due to increasing concerns that vehicles admitted under this exemption are being resold in violation of EPA requirements. EPA lacks the administrative capability to monitor all the vehicles admitted under this exemption and detect the resale of such vehicles.

C. Hardship Exemptions

At the same time, pursuant to its authority under section 203(a)(1) of the Act to exempt individuals from the Act's prohibition against the importation of nonconforming vehicles, EPA is contemplating incorporating certain hardship exemptions in the final imports regulations to cover the following limited situations of severe hardship:

1. Handicapped individuals who need a special vehicle unavailable in a certified configuration;

2. Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

3. Individuals who have owned a vehicle for some substantial period of time (e.g., 2 years) prior to entry into the U.S.A. and did not purchase with the intention of importing into the U.S.;

4. Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

5. Other individuals in similar circumstances that give rise to a severe

hardship, as approved by the Administrator.

EPA intends to grant such exemptions only for extraordinary circumstances and expects very few vehicles to qualify.

Moreover, EPA would require approval of such exemptions prior to permitting the conditional admission of a vehicle into the United States. However, EPA may request U.S. Customs to mitigate the bond posted by the importer of a hardship exemption vehicle. Such recommended mitigation may be equivalent to 25–50% of the vehicle's market value, on vehicles imported under some of the circumstances described above. The Agency is also considering whether, as an alternative it is appropriate to impose an EPA obligation on the bond for vehicles admitted under the hardship exemption. The Agency seeks comment on this question and on the following: (1) In what circumstances should a hardship exemption be granted? (2) What is the appropriate amount of bond mitigation, if any to charge in each of the above-described circumstances of hardship or other similar circumstances? (3) What factors should the Agency consider in determining whether to raise or lower the amount of the bond mitigation? (4) What terms and conditions should be placed on the above described circumstances of hardship or other similar circumstances?

D. Testing exemption

Independent commercial importers who intend to apply for a certificate would be eligible to apply for a testing exemption as provided by the current certification regulations at 40 CFR 85.1705. Those regulations require that any person requesting the exemption must demonstrate that the proposed test program would: (1) Be for the purpose of research, investigation, studies, demonstrations or training; (2) necessitate the granting of an exemption; (3) be reasonable in scope and; (4) exhibit a degree of control consonant with the purpose of the program. However, the Agency would retain the option of imposing additional requirements, such as the posting of a bond, on manufacturers who are independent commercial importers under the authority of § 85.1705(f).

E. Pre-Certification Exemption

Similarly, independent commercial importers interested in obtaining a pre-certification exemption on a prototype vehicle for the purpose of product development, production method assessment and market promotion must apply to the Director, Manufacturers Operations Division, EPA, as required by regulations at 40 CFR 85.1706(b). It has been the Agency's experience that while numerous independent commercial importers have requested designation as a "small volume manufacturer," and even more commercial importers have requested information concerning the small volume certification program, few importers have actually applied for a certificate of conformity.

As a result, the Agency is concerned that independent commercial importers, because of their inexperience with the requirements of the certification process, may apply for the pre-certification exemption with the intention of certifying, and subsequent to importing numerous nonconforming vehicles under the exemption, decide not to pursue certification. EPA is particularly concerned because vehicles so imported might not be brought into conformity under the special provision for "modification and testing" discussed under Option 3. Consequently, EPA will require a bond for any "pre-certification" vehicle entered by an independent commercial importer which would be forfeited unless (1) a certificate of conformity is issued, (2) the vehicle is eligible for and, in fact, has been modified and tested in accordance with the proposed modification and test provision under § 85.1509 (if Option 3 is promulgated), or (3) the vehicle is exported within 120 days from the date of entry. Additionally, each independent commercial importer could import no more than one vehicle for the purpose of precertification for each model of vehicles for which it is seeking certification.

F. Exemptions for Vehicles and Engines Whose Original Manufacture Pre-Dates Applicability of Emission Standards

All vehicles and engines which were originally manufactured prior to the effective date of any Federal emission standards for that vehicle/engine type are explicitly exempted from the requirements of those regulations. For gasoline-fueled light-duty vehicles and light-duty trucks, all vehicles originally manufactured prior to January 1, 1968 are exempted; for diesel fueled light-duty vehicles, all vehicles originally manufactured prior to January 1, 1975 are exempted; for diesel fueled light-duty trucks, all vehicles originally manufactured prior to January 1, 1976 are exempted; for motorcycles, all are exempted that were originally manufactured prior to January 1, 1978; for gasoline-fueled and diesel-fueled heavy duty engines, all are exempted that were originally manufactured prior to January 2, 1970.

G. Other Exemptions

Existing display, racing, national security, repair and diplomatic exemptions will be incorporated in this Subpart for ease of reference. Anyone importing under the display, testing, national security, diplomatic, or hardship exemption shall be required to supply fuel economy data for each imported vehicle that was originally manufactured in or subsequent to the 1980 base model year.

Except as specifically indicated above, these proposed revisions to or retention of existing exceptions and exemptions would apply no matter which option is adopted.

IV. Regulations for Catalyst and O_2 Sensor-Equipped Vehicles

All options would continue the basic approach of the current regulations which require that a catalyst-equipped vehicle which is covered by a certificate of conformity at the time of manufacture and which has been driven outside the United States, Canada and Mexico be entered, by individuals or by anyone, under bond to ensure replacement of the catalyst, unless the vehicle is included in a catalyst control program maintained by the vehicle manufacturer or a U.S. government agency. A requirement to replace the O_2 sensor on O_2 sensor-equipped vehicles has been added to take account of more current technology. The purpose of the regulations is to insure vehicles which have been driven extensively on leaded gasoline, which is the only type of gasoline available in most foreign countries. These provisions would apply no matter what other revisions are made in the existing rules.

V. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small business entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The Agency has prepared an initial RFA for the options presented in this notice, and this initial analysis has been placed on the public docket for this rulemaking.

VI. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare Regulatory

Impact Analyses (RIAs) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in industry costs or prices. Finally, this action will not have a significant adverse effect on industry, competition, employment, investment, productivity, innovation or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, a preliminary RIA has not been prepared. Potential economic effects, however, are addressed in an economic impact analysis prepared in accord with the RFA requirements.

VII. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection at Public Docket EN-79-9 located in EPA's Central Docket Section (LE-131A), 401 M Street SW., Washington, D.C. 20460.

VIII. Paperwork Reduction Act

The information collection requirements in this Supplementary Notice have been submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: August 22, 1985.

Lee M. Thomas,

Administrator.

Appendix I—Option 1

1. General Approach

- Abolish current "modification/testing" option;
- Abolish importation of all nonconforming vehicles, except (1) vehicles covered originally by a certificate of conformity and (2) some special exemptions (e.g., diplomatic exemption);
- Require all vehicles to be covered by a certificate prior to entry, except categories of vehicles explicitly exempted;
- Provide that only OEMs and their distributors are eligible to be certificate holders.

2. Mitigation Policies and Exemptions

- Eliminate 5 years personal use mitigation policy;
- Eliminate nonresident policy provisions;
- Establish reduced penalties or bond for some hardship exemptions.

Appendix II—Option 2

1. General Approach

- Abolish current "modification/testing" option;
- Provide that independent commercial importers (importers for resale with no contractual agreement with OEMs for the distribution of vehicles into the U.S.) may import only vehicles of a class for which a certificate has been issued, or vehicles of a category explicitly exempted;
- Provide that only certificate holders may import nonconforming vehicles which are intended to be modified in accordance with certification requirements (except vehicles covered originally by a certificate of conformity);
- Confirm that OEMs and independent commercial importers are eligible to be certificate holders.

2. Requirements for Certificate Holders of Imported Nonconforming Vehicles

- Require certificate holders to submit data on prototype vehicles to obtain certificates of conformity; EPA intends to perform confirmatory tests on prototype vehicles for independent commercial importers;
- Require certificate holders to comply with requirements imposed on OEMs, including: Selective Enforcement Audit (SEA), Recall, Maintenance Instructions, Warranty, Emissions Labeling, and Fuel Economy Requirements, including Gas Guzzler Tax and Corporate Average Fuel Economy Requirements (CAFE).

3. Specific Requirements for Certificate Holders: Production Line Vehicles

- Require certificate holders to assure that vehicles will not exceed emissions standards by modifying them in accordance with the certificate within 120 days of entry and: (1) Providing EPA documentation, obtained through agreement with the OEM, of any running changes and their effects on emissions, or (2) providing EPA results of successful completion of FTP tests on each vehicle, *or* (3) providing results of successful completion of FTP tests only on every third vehicle (determined by date of import) while providing assurance on each vehicle not emissions tested that the emissions *related* parts numbers (i.e., those originally furnished by an OEM and appearing on a list to be issued by EPA) are identical to those in the application for certification.
- Require application of deterioration factor for all FTP tests.
- Require storage by commercial importer of each vehicle for fifteen (15) days following date of notification to EPA of modification or modification/testing to provide opportunity for EPA inspection.
- Require list of purchasers to be furnished to EPA upon request.

4. Mitigation Policies and Exemptions

- Eliminate 5 year personal use mitigation policy;
- Eliminate nonresident policy provision;
- Require bonds for some exempted vehicles which would be forfeited unless a certificate is issued within 120 days, or vehicle is exported;
- Establish bonds for precertification, testing and some hardship exemptions.

5. Enforcement Sanctions

- Provide for suspension and revocation of certificates (production line vehicles);
- Provide for bond forfeiture (exempted vehicles and vehicles admitted under special circumstances).

Appendix III—Option 3

1. General Approach

- Establish same framework and requirements as Option 2 but add a limited "modification/testing" option under which certificate holders (and only certificate holders) may import eligible vehicles for which a certificate does not exist. Under this provision, vehicles would be eligible if not included on a list, published each year by EPA, of vehicles "not qualified for modification/test." The list would prohibit the availability of modification/testing for (1) all models for which certificates have been issued to date to OEMs or to independent commercial importers and (2) models for which certificates of conformity have not been issued [7] whose aggregate importation

[7] The term "model" as used here has a broad and very special meaning and should not be confused with other uses of the term in the Act. For purposes of the list, the term "model" shall refer to those vehicles which are identical with respect to the (1) designation given by the original equipment manufacturer, (2) engine displacement within a 10% range and, (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel).

volume as computed for the historical period exceeds 60 vehicles. A model whose name has been placed on the list shall not be removed in subsequent years.

2. General Requirements for Certificate Holders

A. Certified Vehicles

- Require certificate holders to submit data on prototype vehicles to obtain certificates of conformity; EPA intends to perform confirmatory tests on prototype vehicles for independent commercial importers;
- Require certificate holders to comply with requirements imposed on OEMs, including: Selective Enforcement Audit (SEA), Recall, Warranty, Emissions labeling, fuel economy labeling, maintenance instructions, Gas Guzzler Tax and Corporate Average Fuel Economy Requirements (CAFE).
- No bond requirement.

B. Mod/tested Vehicles

- Require certificate holders to keep detailed records on emission control designs (parts numbers, etc.) associated with each vehicle;
- Require certificate holders to comply with requirements listed above for certified vehicles, including Gas Guzzler Tax and CAFE requirements, if applicable.
- Require bonds until EPA approval of emission results from compliance test.

3. Specific Requirements for Certificate Holders: Production Line Vehicles

A. Certified Vehicles

- Require certificate holders to assure that vehicles will not exceed emissions standards by modifying them in accordance with the certificate within 120 days of entry and (1) providing EPA documentation, obtained through agreement with the OEM, of any running changes and their effects on emissions, or (2) providing EPA results of successful completion of FTP tests on each vehicle, or (3) providing results of successful completion of FTP tests only on every third vehicle (determined by date of import) while providing assurance on each vehicle not emissions tested that the emissions related parts numbers (i.e., those usually furnished by an OEM and appearing on a list to be issued by EPA) are identical to those in the application for certification.
- Require application of deterioration factor for all FTP tests.
- Require storage by certificate holder of each vehicle for 15 days following modification/testing and from the date of notification to EPA to provide opportunity for EPA inspection.
- Require list of purchasers to be furnished to EPA upon request.

B. Mod/Tested Vehicles

- Require certificate holders to modify and test each vehicle within 120 days of entry; require notice to EPA when modifications and testing complete; require notice to EPA.
- Require application of deterioration factor assigned by EPA for all FTP test.
- Require vehicles to be stored until release of bond obligation.
- Require list of purchasers to be furnished to EPA upon request.

4. Mitigation Policies and Exemptions

- Eliminate 5 year personal use mitigation policy;
- Eliminate general forfeiture policy;
- Eliminate nonresident policy provision;
- Eliminate bonds for certified vehicles; maintain bonds for mod/test vehicles;
- Require bonds for some exempted vehicles which would be forfeited unless certificate issued within 120 days, or vehicle exported.

5. Enforcement Sanctions

A. Certificate Holders

(1) Certified Vehicles.

- Provide for suspension and revocation of certificates.

(2) Mod/tested Vehicles.

- Provide for withdrawal of privilege for a particular certificate holder to import, modify or test mod/tested vehicles.
- Provide for suspension and revocation of certificates.
- Require bond through demonstration of durability.

B. Exempted Vehicles

- Provide for bond forfeiture for certain pre-certification and test vehicles.

Appendix IV—Proposed Regulatory Language for Options 2 and 3 [8]

For reasons discussed in the preamble, it is proposed that 40 CFR Part 85, Subpart P and 40 CFR Part 600 be amended as follows:

1. Subpart P is revised to read as follows:

[8] Provisions that would be promulgated only if EPA adopts Option 3, as discussed in the preamble, are included in brackets. All other provisions would apply under either Option 2 or 3.

PART 85—[AMENDED]

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Sec.

85.1501 Applicability.
85.1502 Definitions.
85.1503 General requirements for importation of nonconforming vehicles.
85.1504 Conditional admission.
85.1505 Final admission of certified vehicles.
85.1506 Inspection and testing of imported motor vehicles and engines.
85.1507 Maintenance of certificate holders' records.
85.1508 "In Use" inspections and recall requirements.
[85.1509 Special provisions for admission of vehicles which will not be covered by a certificate of conformity].
85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.
85.1511 Exemptions and exclusions.
85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.
85.1513 Prohibited acts; penalties.
85.1514 Laboratory recognition.
85.1515 Treatment of confidential information.
85.1516 Effective dates.

Authority: Secs. 203, 206, 207, 208(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7422, 7525, 7542(a) and 7601(a).

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

§ 85.1501 Applicability.

(a) This subpart is applicable to motor vehicles and motor vehicle engines which are offered for importation or imported into the United States and are not covered by certificates of conformity issued under Part 86 at the time of importation. Compliance with regulations under this Subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

§ 85.1502 Definitions.

As used in this subpart, all terms not defined herein have the meanings given them in § 12.73, in the Clean Air Act, as amended, and elsewhere in Parts 85 and 86 of this Chapter.

Act. The Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Administrator. The Administrator of the Environmental Protection Agency.

Certificate of conformity. The document issued by the Administrator under section 206(a) of the Act.

Certificate holder. The entity whose name appears on the certificate of conformity for a class of motor vehicles or motor vehicle engines.

FTP. The Federal Test Procedure at 40 CFR Part 86.

Independent commerical importers. Importers who do not have a contractual agreement with foreign manufacturers to act as their authorized representatives for the distribution of vehicles into the U.S. market.

[*Model.* For the purposes only of the special provisions of § 85.1509, vehicles or engines of the same model are those which have the same (1) OEM designation (irrespective of model year) (2) engine displacement (within a 10% range) and (3) fuel system type (gasoline/carbureted; gasoline/fuel injected; diesel.)]

Model year. The manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder modifies the vehicle or engine. This definition does not apply for the purposes of § 85.1512.

Nonconforming vehicle or engine. A vehicle or engine which has not been imported by an OEM or its authorized representative or distributor.

Original equipment manufacturer (OEM). The entity which manufactured the base motor vehicle or motor vehicle engine originally.

Running changes (imported nonconforming vehicles). Those changes in configuration, equipment or calibration of some or all of the vehicles which are made by an OEM in the course of motor vehicle or motor vehicle engine production.

United States. United States includes the Customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Working day. Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

§ 85.1503 General requirements for importation of nonconforming vehicles.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by a person or entity who is a current holder of a valid certificate of conformity unless an exemption is granted by the Administrator under § 85.1511 of this subpart or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued under 40 CFR Part 86 and the certificate holder has complied with all requirements of § 85.1505; or

[(2) The vehicle or engine is modified and emissions tested in accordance with the special provisions of § 85.1509 and the certificate holder has complied with all other requirements of § 85.1509; or]

(3) The vehicle or engine is exempted under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

§ 85.1504 Conditional admission.

(a) An eligible motor vehicle or motor vehicle engine offered for importation by a certificate holder may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) Not later than 5 days following conditional admission, the certificate holder has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, [§ 85.1509], § 85.1511, or § 85.1512 which report shall contain the following:

(i) Identification of the certificate holder importing the vehicle or engine;

(ii) Identification of the vehicle or engine owner and the vehicle owner's taxpayer identification number;

(iii) Identification of the vehicle or engine;

(iv) Information indicating whether the vehicle or engine is to be imported under the provisions of § 85.1505, [§ 85.1509,] § 85.1511 or § 85.1512;

(v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the certificate holder's application to the Administrator for final admission under § 85.1505, [§ 85.1509,] § 85.1511 or § 85.1512;

(vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505. Unless otherwise noted in § 85.1511, a bond will be required for a vehicle or engine imported under [§ 85.1509,] § 85.1511 or § 85.1512. The period of conditional admission shall not exceed a period of 120 days. During this period, certificate holders shall store the vehicle or engine, except certain vehicles or engines entering under the diplomatic exemption provisions of § 85.1511(b)(7), at locations where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1505 Final admission of certified vehicles.

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator, on forms specified by EPA. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration may be made in one of the following ways:

(i) Through modification in accordance with the provisions of the certificate holder's certificate, presentation to EPA of an enforceable (i.e., contractual agreement) with the OEM which requires the OEM to provide to the certificate holder information concerning running changes to the base vehicle or engine, and actual receipt by EPA of notification by the certificate holder of those running changes and their effect on emissions;

(ii) Through modification in accordance with the provisions of the certificate holder's certificate of conformity and successful completion of an FTP test on each vehicle or engine within 120 days of entry. In order to ensure the durability of these vehicles, emission results on each FTP tested vehicle or engine shall be adjusted by the deterioration factor used by the certificate holder during certification and such adjusted results shall comply with applicable emission standards; or

(iii) Through modification in accordance with the provisions of the certificate holder's certificate of conformity and successful completion of an FTP test on every third vehicle or engine imported under that certificate, sequencing to be determined by the date of importation of each vehicle or engine. In each case, emission results shall be adjusted by the deterioration factor used by the certificate holder during certification and such adjusted results shall comply with applicable emission standards. If this option is chosen, the certificate holder must also verify that each applicable emissions-related part number on each emission-related part of

each vehicle that is *not* FTP tested is identical to the part number of the corresponding part on the emission data test vehicle used during certification. Applicable emission-related parts shall be those appearing on a list to be issued by EPA for this specific purpose;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should more than two failures have occurred on the subject vehicle, the certificate holder's application should report the failures and all changes, including calibration changes, it made before the vehicle successfully passed the test. Such changes would be considered running changes and have to be implemented on vehicles subsequently modified under the certificate of conformity. Such reports shall be made to both the Manufacturers Operations and Certification Divisions of EPA. The cause of the failure shall be identified if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified on the certificate that potentially covers the vehicle to assure compliance with requirements imposed on all manufacturers by the Clean Air Act, the Energy Policy and Conservation Act and the Energy Tax Act of 1978;

(7) All information required under § 85.1510;

(8) An attestation that the certificate holder is a manufacturer of those vehicles and is responsible for complying with all applicable provisions of the Act, and the Energy Tax Act of 1978 and the Energy Policy and Conservation Act.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received notice from EPA to the contrary within 15 working days of the date of EPA receipt of the certificate holder's application under § 85.1505(a). The date on a certified mail receipt shall be deemed to be the official date of notification to EPA.

§ 85.1506 Inspection and testing of imported motor vehicles and engines.

(a) In order to allow the Administrator to determine whether a certificate holder's vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines under control of the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported under this Subpart was or is modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines or required to be kept by § 85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine or required by § 85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a)–(c) of this section apply whether or not the certificate holder owns or controls the facility in question. Violation of such requirements may preclude an informed judgment that vehicles or engines being imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a)–(c) of this section.

(e) Duly designated Enforcement Offices are authorized to proceed ex parte to seek warrants authorizing the inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under [§] § 85.1505 [or 85.1509].

(g) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his/her questions.

§ 85.1507 Maintenance of certificate holder's records.

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that motor vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal, state or local government agency to be submitted or retained in conjunction with the certification, importation, test, registration or titling of motor vehicles or motor vehicles engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) All shipping documents;

(5) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(6) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure, including documents ensuring correct test settings were used during the FTP;

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine for which a certificate exists; and

(9) Documents providing evidence that each vehicle or engine imported under this subpart was properly stored prior to final admission.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with requirements of this subpart are under the control of the certificate holder.

§ 85.1508 "In Use" inspections and recall requirements.

(a) Vehicles or engines which have been imported, modified and/or emissions tested by a certificate holder may be inspected and in-use emission tested by EPA throughout the useful life of the vehicles or engines.

(b) Certificate holders shall maintain for six years and provide to EPA upon request a current owners list of all vehicles imported by the certificate holder under this Subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of vehicles or engines covered by a certificate of conformity, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at 40 CFR 85.1801 *et seq.* shall govern the certificate holder's responsibilities and references to manufacturer in the Recall Regulations shall apply to the certificate holder.

§ 85.1509 Special provisions for admission of vehicles which will not be covered by a certificate of conformity.

(a) A motor vehicle or motor vehicle engine may be imported by a certificate holder under this section if:

(1) The vehicle or engine is of a model which does not appear on a currently effective EPA list of vehicles "not qualified for modification/test" as described in paragraph (c) of this section;

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (d) of this section; and

(3) A bond is posted with the U.S. Customs Service under 19 CFR 12.73 to ensure compliance with applicable provisions of the subpart.

(b) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator, on forms specified by EPA. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) Information demonstrating that the vehicle has been modified and/or emission tested in accordance with the Federal Test Procedure and that the emission test results have been adjusted by deterioration factor assigned by EPA and that such adjusted results comply with applicable emission standards;

(3) Information demonstrating that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(4) Information demonstrating that the emission controls of the vehicle or engine are durable. Such demonstration can be made in either of the following ways:

(i) Through attestation by an independent professional engineer (P.E.) having emission control experience that the certificate holder has used emission control parts that are identical to those for which the certificate holder received certification and that the emission controls have been properly installed and can be expected to be durable throughout the useful life of the vehicle or engine; or

(ii) Through submittal of a report by a P.E. having emission control experience that furnishes analytical evidence that the certificate holder's emission control parts that are *not* identical to those for which the certificate holder received certification are durable throughout the useful life of the vehicle or engine and that they have been properly installed together with the P.E.'s attestation to this effect;

(5) Information demonstrating that the certificate holder has complied with the requirements of § 85.1510, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(c) EPA list of vehicles "not qualified for modification/test".

(1) EPA will publish a list yearly, on or about September 1 of each year, of vehicles "not qualified for modification/test". Such list will be published in the **Federal Register** and will be based on historical data for the one year period ending June 30 (historical period) of the year of publication and such other information as the Administrator may deem necessary. Such list shall be effective on January 1 of the subsequent year for the entire calendar year and shall prohibit the availability of modification/testing under paragraph (b) of this section for:

(i) All models for which certificates have been issued;

(ii) All models for which no certificate exists and which have been imported during the historical period (but not necessarily modified or tested) and whose computed aggregate volume, derived without consideration of date of original manufacture of the vehicle, has exceeded 60 vehicles or engines during the historical period.

(2) A model whose name has been placed on the list shall not be removed from the list in subsequent years.

(d) EPA list of certificate holders ineligible to import vehicles for modification/test. EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles under this section. Such determinations shall be made in accordance with the criteria and procedures in §85.1513 of this subpart.

(e) Inspections. Prior to final entry, vehicles imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements upon inspection or retest, the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (d) of this section;

(2) Individual vehicles which fail an FTP retest or inspection must be

repaired so as to conform with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting, including transportation, shall be borne by the certificate holder.

(f) In-use inspection and testing. Vehicles imported under this section may be tested or inspected by EPA at any time during the vehicle's useful life in accordance with § 85.1508 (a) and (b). If in the judgment of the Administrator a substantial number of properly maintained and used vehicles fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list specified in paragraph (d) of this section of certificate holders ineligible to import vehicles under the modification/test provision.]

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

The provisions of this section are applicable to all vehicles imported under the provisions of [§ 85.1509 and] § 85.1505.

(a) *Maintenance instructions.*

(1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle imported under this section, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser or owner as may be reasonable and necessary to assure the proper functioning of the emission control system.

(2) [For vehicles imported under § 85.1509, the instructions shall be submitted to EPA with the certificate holder's application for final admission of the vehicle or engine.] For vehicles and engines imported under § 85.1505 [and § 85.1509], each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be furnished to the purchaser or owner of such vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in § 85.085–25, and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide for vehicle emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR Part 85, Subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are ensured by a mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

[(3) Certificate holders importing under § 85.1509 shall submit both warranties to EPA with the application for final admission of the vehicle or engine and shall attest that such warranties will be or have been provided.] Certificate holders importing under § 85.1505 shall attest in each application for final admission that such warranties will be or have been provided.

(c) *Emission labeling.* (1) The certificate holder who imports any vehicle under [§ 85.1509 or] § 85.1505 shall affix a permanent legible label in a readily visible position in the engine compartment. The label shall meet all the requirements of § 86.082–35 and shall contain the certificate holder's address and telephone number [except that, for vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution control requirements under a modification/test program"];

(2) [As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall submit a copy of such label.] Certificate holders importing under § 85.1505 [or § 85.1509] shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.*

(1) The certificate holder who imports any vehicle under this section shall affix a fuel economy label that shall comply with the requirements of 40 CFR Part 600, Subpart D.

[(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.]

(3) [As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall submit a copy of such label and attest to compliance with the above labeling requirements.] In each application for final admission of a vehicle or engine under § 85.1505, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.*

(1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under §[§]85.1505 [and 85.1509].

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner IRS forms numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

[(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064].

(f) *Corporate Average Fuel Economy (CAFE).* (1) Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 *et seq.*, and 40 CFR Part 600 for vehicles imported under §[§]85.1505 [and 85.1509].

§ 85.1511 Exemptions and exclusions.

(a) Notwithstanding any other requirements of this subpart, a motor vehicle or engine may be finally admitted into the United States upon approval of the importer's application to the administrator for any exemptions or exclusions under this section, on forms specified by EPA. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) Information that indicates that the importer is entitled to one of the exemptions or exclusions listed in paragraph (b) of this section;

(3) Fuel economy data generated under the provisions of 40 CFR Part 600, Subpart D, for vehicles admitted under paragraphs (b) (2), (3), (5), (7) and (8) if the vehicle was originally manufactured in or subsequent to the 1980 base model year.

(b) *Specific exemptions and exclusions.* (1) *Export exemptions.*—(i) Vehicles intended solely for export may be imported subject to the requirements of 40 CFR 85.1704 and 85.1707.

(ii) Motor vehicles and motor vehicle engines may be imported under an export exemption only by a person

engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines. Conditional admission for such vehicles shall be under bond.

(2) *Display exemptions.* (i) Vehicles intended solely for display may be imported subject to the requirements of 40 CFR 85.1707.

(ii) Display vehicles or engines may be imported by any person. Conditional admission of such vehicles shall be under bond. Display vehicles or engines may not be sold in the United States and may not be registered for licensed use on or operated on public roads or highways in the United States.

(3) *Testing exemptions.* Testing vehicles or engines may be imported by any person who is able to satisfy the requirements of 40 CFR 85.1705 and 85.1708. Conditional admission of such vehicles shall be under bond. Test vehicles or engines may be operated on and registered for use on public roads or highways for a period not exceeding one year from the date of importation provided that the operation is an integral part of the test and prior written approval has been obtained from the Administrator. Requests for such approval shall be in writing, and shall briefly describe the proposed testing program, including the duration of such program.

(4) *Racing exclusions.* Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in 40 CFR 85.1703. Conditional admission of such vehicles shall be under bond. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(5) *National security exemptions.* (i) Vehicles may be imported under the national security exemption found at 40 CFR 85.1708. Conditional admission of such vehicles shall be under bond.

(ii) Only persons who are manufacturers may import a vehicle under a national security exemption.

(6) *Exemptions for repairs or alterations.* Owners of fleet vehicles or engines may import such vehicles or engines solely for purposes of repairs or alterations. Conditional admission of such vehicles shall be under bond. Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways. They may not be sold in the United States and must be exported upon completion of the repairs or alterations.

(7) Diplomatic and foreign military personnel may import nonconforming vehicles without bond. Such vehicles may not be sold in the United States.

(8) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. However, specific approval for importation in these cases must be obtained from the Administrator prior to a conditional admission. Conditional admission may be under bond. Examples of limited situations of severe hardship are as follows:

(i) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(iii) Individuals who have owned a vehicle for some substantial period of time (e.g., 2 years) prior to entry to the U.S. and did not purchase the vehicle with the intention of importing it into the U.S.;

(iv) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

(v) Other individuals in similar circumstances that give rise to a severe hardship, as approved by the Administrator.

(9) *Precertification exemption.* (i) Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers if approval is obtained from the EPA in advance. Application for such exemptions shall be made on such forms as EPA may designate and shall be mailed to:

Director, Manufacturers Operations Division (EN-340), Office of Mobile Sources, U.S. Environmental Protection Agency, Washington, D.C. 20460.

(ii) No more than one prototype vehicle for each model of vehicles for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(iii) Each prototype vehicle shall be bonded. Unless a certificate of conformity is issued for the vehicle, the total amount of the bond shall be forfeited, or the vehicle must be exported, within 120 days from the date of entry.

(10) Exemptions based on date of original manufacture. The following vehicles and engines are exempted from the requirements of the Act:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968;

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975;

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976;

(iv) Motorcycles originally manufactured prior to January 1, 1978;

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 2, 1970.

(c) Individuals as well as certificate holders shall be eligible for importing vehicles into the United States under the exemptions provisions of this section unless otherwise specified.

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(1) Was covered by a certificate of conformity at the time of manufacture;

(2) Was certified with a catalyst emission control system and/or O_2 sensor;

(3) Is labeled in accordance with 40 CFR Part 86, Subpart A; and

(4) Has been driven outside the United States, Canada and Mexico.

Such a vehicle may be entered under bond pursuant to 19 CFR 12.73 unless such vehicle is included in a catalyst and O_2 sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O_2 sensor programs conducted by manufacturers will be approved each model year.

(b) For the purpose of this section, "catalyst and O_2 sensor control program" means a program instituted and maintained by a manufacturer, or any other U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and O_2 sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers of new motor vehicles or engines for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. Such vehicles may be granted final admission upon application to the Administrator, on

forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1)(i)–(v) and shall contain both an attestation by a qualified mechanic that the catalyst and/or O_2 sensor have been replaced, if necessary, and are functioning properly and a copy of the invoice for parts and labor.

§ 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) During a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways,

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to §§ 85.1504, 85.1505, [85.1509], 85.1511 or 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any certificate holder who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than $10,000 for each violation. In addition to the penalty provided in the Act, where applicable, [under the special modification/test provisions of § 85.1509,] under the exception provisions of § 85.1511, or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(d) Failure to comply with §§ 85.1506, 85.1507 and [85.1509] constitutes a violation of section 203(a)(1) of the Act.

(e) (1) A certificate holder whose motor vehicles or engines fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

[(iii) The certificate holder may be deemed ineligible to import vehicles under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles for modification/testing.]

(2) Grounds for the actions described in paragraph (e)(1) shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the importer, which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's eligibility for admission to the U.S. under this subpart;

(ii) Use by the certificate holder of a laboratory facility for emissions testing which is not on or has been removed from the list of qualified laboratories under § 85.1514; or

(iii) Failure of a significant number of vehicles imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iv) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1), the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, [or intended suspension of eligibility to conduct modification/testing under § 85.1509,] and the grounds for such action.

(ii) The certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

(iii) A certificate holder may request within 15 calender days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing:

(A) As to whether the tests have been properly conducted, or

(B) as to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity [or its eligibility to perform modification/testing pursuant to this section] and prior to the commencement of a hearing, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate [or eligibility to perform modification/testing] was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearing on suspensions and revocations of certificates of conformity [or of eligibility to perform modification/testing] shall be held in accordance with the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to paragraph (e)(3)(iii).

(ii) Hearings under paragraph (e)(3)(iii) shall be held in accordance with the procedures outlined in § 86.613, where applicable, provided that where § 86.612 is referred to in § 86.613:

§ 86.612(a) is replaced by § 85.1513(e)(2); and

§ 86.612(i) is replaced by § 85.1513(e)(3)(iii).

(5) When a hearing is requested under this subsection and it clearly appears from the data or other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing and suspending or revoking the certificate of conformity [or the certificate holder's eligibility to perform modification/testing.]

(6) In lieu of requesting a hearing under paragraph(e)(3)(iii), a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent.

§ 85.1514 Laboratory recognition.

(a) Only laboratories found to be capable of conducting the Federal Test Procedure (ETP) by EPA may conduct emission tests on vehicles imported under this subpart. A list of qualified laboratories shall be maintained and made available to the public by the Agency and be periodically updated as necessary.

(b) To be considered qualified, a laboratory must submit a laboratory capability application to the Administrator which meets the following criteria:

(1) The application must show that the laboratory is equipped to properly perform the FTP;

(2) The application must show that the laboratory employs personnel with the qualifications and experience to perform the FTP properly;

(3) The application must include a sample test packet demonstrating proper performance of the FTP;

(4) The application must contain an agreement by the applicant to allow periodic and reasonable inspection, including correlation testing, of its facility and procedures by EPA representatives, and an agreement to submit test data packages upon request, and an agreement to allow EPA representatives to be present during the performance of any FTPs;

(5) The laboratory must maintain a current capability application by updating its application quarterly, in addition to meeting the requirements of section (c); and

(6) The application must include a statement of corporate or private ownership.

(c) A qualified laboratory must report to EPA any significant changes in laboratory personnel, equipment, facilities or procedures within 10 days of such changes.

(d) A laboratory may be temporarily or permanently removed from the list of qualified laboratories if any of the following occur:

(1) The laboratory ceases to meet any of the requirements in program (b) or fails to comply with paragraph (c) of this section;

(2) The laboratory or laboratory management is being criminally investigated or has been indicted and such investigation or indictment is connected to the testing operation of the laboratory;

(3) The laboratory is found to have engaged in fraud, deceit, or other wrongdoing in connection with its application or its performance or reporting of results of any FTP;

(4) A significantly high percentage of vehicles tested initially at the laboratory do not pass subsequent inspections or testing under this section; or

(5) Other good cause which demonstrates that the laboratory is not capable of conducting valid FTPs or that results from that laboratory are not reliable.

(e) If a laboratory or laboratory management is being (1) criminally investigated or indicted or (2) administratively investigated and such investigation or indictment is related to the operation of the laboratory, EPA may suspend acceptance of emission data packages from that laboratory pending the outcome of the investigation or indictment.

(f) A laboratory that commits fraud in its application shall be treated as though it had never been qualified and the determinaton of qualification shall be void *ab initio*.

(g) No laboratory shall be removed from the list until there has been notification to the laboratory of the intention to remove it. Notification shall be in writing with the reasons for the intended removal specifically stated. If a laboratory so requests, within 30 days of receipt of notice regarding removal from the list, representatives of the laboratory may meet and confer with EPA representatives and be given the opportunity to present orally or in writing, data or information relating to the proposed removal of the facility from the list. The Administrator's determination to remove a laboratory from the list shall be in writing and shall summarize the basis for his/her action. In such determination, the Administrator shall also inform the laboratory of the period of time during which the laboratory will not be permitted to apply for reinstatement on the list. Such period will not exceed five years.

(h) If a laboratory is removed from the list of qualified laboratories, or emission test data shall be accepted by EPA for the purposes of determining compliance with this Subpart that has been generated at that laboratory until such time as the laboratory is reinstated on the list.

§ 85.1515 Treatment of confidential information.

(a) Any importer or consignee, laboratory or modifier may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this Subpart is confidential, an importer, consignee, laboratory, or modified must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 85.1516 Effective dates.

The provisions of this subpart, other than § 85.1511, are effective on [6 months after date of publication of the final rule in the **Federal Register**]. Section 85.1511 is effective [2 months after date of publication of the final rule in the **Federal Register**.]

PART 600—[AMENDED]

2. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2003, 2005, 2006.

3. 40 CFR 600.007–80(b) be amended by adding a new paragraph (7) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(b) * * *

(7) For vehicles imported under [§ 85.1509 or] § 85.1511, only the following requirements must be met:

[(i) For vehicles imported under § 85.1509, the fuel economy value must be generated contemporaneously with the emission test used for purposes of demonstrating compliance with § 85.1509. No modifications or

adjustments should be made to the vehicles between the fuel economy and the emissions test.]

(ii) For vehicles imported under [§ 85.1509 or] § 85.1511(b) (2), (3), (5), (7), or (8), with over 10,000 miles, the equation in § 600.006–86(g)(1) shall be used as though only 10,000 miles had been accumulated;

(iii) Fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under [§ 85.1509 or] § 85.1511(b) (2), (3), (5), (7) or (8) shall be considered a separate fuel economy data vehicle for the purposes of determining a fuel economy value.

4. 40 CFR 600.007–80 be amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data must be covered by a certificate of conformity under Part 86 before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under Subpart F.

Except that vehicles imported under [§ 85.1509 and] § 85.1511 need not be covered by a certificate of conformity.

[FR Doc. 85–21155 Filed 9–6–85; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
September 9, 1985

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting; Request for Public Comment on a Petition for Rulemaking

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Request for public comment on a petition for rulemaking.

SUMMARY: OSM seeks comments and recommendations regarding the granting or denying of a petition, submitted pursuant to section 201(g) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1211(g), requesting further interpretation of OSM's definition of "reclaimed coal" contained in 30 CFR 870.5.

DATE: Comments must be received no later than 5:00 p.m. on October 9, 1985.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–R), Room 5315, 1100 L St., NW., Washington, DC 20240, or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–R), Room 5315–L, 1951 Constitution Ave., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401–L, Washington, DC 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

I. Commenting Procedures

Public Comment Period: The comment period on the petition will extend until the date listed above. All written comments must be received at the address listed above by 5:00 p.m. on that date. Comments received after that date may not necessarily be considered or included in the administrative record on the petition. OSM cannot ensure that written comments received or delivered during the comment period to any location other than that specified above will be considered and included in the administrative record on this petition.

Availability of copies: In addition to its publication here, copies of the petition and copies of 30 CFR 870.5 are available for inspection and may be obtained at the address indicated above.

Public meetings: No public hearing has been scheduled. However, the headquarters staff of OSM will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., throughout the comment period. In order to arrange such a meeting, please contact the person listed above under the "further information" section.

II. Background and Substance of Petition

Pursuant to section 201(g) of the Act, 30 U.S.C. 1211(g), any person may petition for a change in OSM's permanent program rules which appear in 30 CFR Chapter VII. The Act requires the Director to either grant or deny the petition within 90 days after it is received. See section 201(g)(4); 30 U.S.C. 1211(g)(4). Under the applicable regulations for rulemaking petitions, 30 CFR 700.12(c), if the Director determines that the petition has a reasonable basis, a notice shall be published in the **Federal Register** seeking comments from the public on the proposed change. OSM received a letter dated July 5, 1985, from the United States Fuel Company (USF), presenting to the Secretary of the Interior a petition for further interpretation of the definition of "reclaimed coal" found in 30 CFR 870.5. The Director has determined that this petition for interpretation has a sufficiently reasonable basis to seek further comments. The text of the petition appears as an Appendix to this notice.

Petitioner USF is an underground mining operation which has a continuously operating coal preparation plant within the permit area. The coal passing through the preparation plant is washed to remove non-combustible bone, rock, ash and other impurities. These by-products are separated from the coal in the wash plant and deposited as a slurry into holding ponds along with some remaining coal fines. Beginning in 1975, USF began mixing the slurry from the holding ponds with run-of-mine coal. Petitioners maintain that this use of coal slurry does not fit the intended definition of "reclaimed" coal. To the extent that the current definition of "reclaimed coal" found at 30 CFR 870.5 is ambiguous, petitioner would like OSM to publish an interpretation that would clarify that slurry dredged from ponds within an existing permit area as part of an integrated underground operation should not be included in the definition of reclaimed coal. The result would be that such slurry would be subject to a reclamation fee of 15¢ per ton as underground-mined coal rather than 35¢ per ton as surface-mined coal.

The notice seeks public comments on the suggested amendment. At the close of the comment period, the Director will review and consider all comments and make a decision to either grant or deny the petition. If the decision is made to grant the petition, rulemaking proceedings will be initiated in which public comment will again be sought. If the decision is made to deny the petition no further rulemaking action will occur.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. No regulatory flexibility analysis is needed at this stage; nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(c), is needed.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

Appendix

The text of the petition dated July 5, 1985, from the United States Fuel Company, is as follows:

Background

Petitioner, United States Fuel Company, is the State of Utah's oldest continuously-operated coal mining company with over 70 years of underground coal mining experience. United States Fuel Company operates several underground coal mines in Carbon County, Utah, located on leased federal lands (approximately 5,927 acres) and on private lands owned by the company (approximately 9,833 acres fee).

United States Fuel Company is one of the few underground mining operations in the western United States which has a coal preparation plant operated on a continual basis. In operation since 1939, the coal preparation plant has been used to "wash" the coal in order to enhance the quality and marketability of the coal resource. The purpose of the coal preparation plant is to remove non-combustible bone, rock, ash, and other impurities which degrade the quality and market ability of the coal. These by-products are separated from the valuable coal resource in the wash plant and deposited as a slurry into holding ponds. Inevitably, some coal fines or slack coal remain mixed in the slurry deposited in the holding ponds.

Until recently, this coal slurry was considered a valueless by-product of the coal preparation process. However, beginning in 1975, United States Fuel Company pioneered the development of a market for this coal slurry, successfully blending the wash fines from the slurry ponds with run-of-mine coal or washed coal where contract terms and coal quality specifications permit. This blended coal has been sold successfully on both the export and domestic market under

multiyear contracts. It is the sale of this coal slurry which creates the questions that are submitted for clarification by this Petition for interpretive rule making.

The sale and utilization of the coal slurry has enhanced the value and utility of the entire coal resources. By substituting higher-grade coal that would otherwise be committed to satisfy market demand, the blending of this coal slurry has increased the ultimate recovery and conservation of a valuable coal resource. Sale of the coal slurry also allows recovery of the underground mining costs incurred in producing the coal in the slurry, increasing the profit and resource recovery of the entire underground mining operation.

The slurry ponds are within the permit area covered by the underground mine operation and reclamation plan filed with the Utah Division of Oil, Gas and Mining and the U.S. Office of Surface Mining pursuant to the Surface Mining Control and Reclamation Act (30 U.S.C. 1201, et seq.). The use and sale of this coal wash by-product has diminished the environmental, land use, operational, and reclamation costs associated with the construction, maintenance, and reclamation of coal slurry holding ponds.

Use and sale of the slurry coal serves the general mandate of Congress to maximize the recovery of valuable coal resources and to protect the environment. However, both of these goals are frustrated by the literal application of the Department regulation at 30 CFR 870.5 and imposition of a 35¢ per ton reclamation fee on each ton of coal slurry sold. As developed more fully below, this regulation should not apply to the integrated underground mining operations conducted by United States Fuel Company, and the only reclamation fee applicable to the sale of coal slurry from the operation is the underground rate of 15¢ per ton.

Regulation Involved

This Petition is based on the application of the "reclaimed coal" definition contained in 30 CFR 870.5 to the coal slurry sold by United States Fuel Company as an additive to its washed or run-of-mine coal. The pertinent portion of that regulation provides:

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks for retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. *Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.* (emphasis added)

As developed in the following arguments submitted in support of this Petition, the application of the emphasized language to this particular operation ignores the true facts and circumstances surrounding the underground mining conducted by United States Fuel Company and is at odds with the intent of Congress. Petitioner asserts that the "surface mining" reclamation fee should not be applied to coal slurry sales from this underground mining operation.

Argument in Support of the Petition

A. The Coal Slurry is Produced by Underground Mining Operations, so the Reclamation Fee Must be 15¢ Per Ton

Based on the foregoing regulation, the Office of Surface Mining (OSM) is attempting to exact a 35¢ reclamation fee on every ton of coal slurry sold by United States Fuel Company, the same fee required on "surface mining" operations. This attempt on the part of the OSM ignores the fact that all of the coal slurry was produced by the underground mining operations of United States Fuel Company. Congress expressly provided that the reclamation fee owing on "coal produced by underground mining" is limited to 15¢ per ton (30 U.S.C. § 1232). There is no rational basis for the OSM to ignore this unambiguous directive and apply the surface mine reclamation fee to coal which unquestionably orginates with underground mining. *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 104 S. Ct. 2778, 2781–82 (1984). United States Fuel Company's operation is not a "reclaimed coal operation" since all of the coal slurry in question originates by underground mining and is produced by a single, integrated mining operation which produces coal from underground.

B. A Lower Reclamation Fee Will Promote Maximum Recovery of the Coal Resource

The coal market served by United States Fuel Company's underground mine requires varying qualities of coal, according to specifications contained in each coal sale contract. Delivery of coal meeting these coal specifications is dependent on geological conditions encountered underground and other variables beyond the control of United States Fuel Company. Where coal quality exceeds the contract specifications, no added income is derived for the added energy resource delivered to the market and, in some cases, penalties may even apply for violation of contract specifications.

United States Fuel Company has discovered that by blending the high-grade coal mined underground with the coal slurry, the quality of the coal can be adjusted to achieve contract requirements. The blending of coal slurry maximizes the economic recovery of the underground coal resource in several ways. First, the amount of coal slurry added to meet the market demand will substitute higher-grade coal which would otherwise be consumed by the market. This market will not pay extra for the delivery of higher-grade coal so, from an economic standpoint, the extra coal quality would literally be wasted. The high-grade coal substituted by the coal slurry is conserved for use in the future by U.S. Fuel's blending operation.

Blending the coal slurry also promotes the recovery of the very low-grade coal which ends up in the slurry ponds as a result of the coal washing process. If it were not for the integrated underground mining operation which produced the high-grade coal and contracts which allow blending to adjust the quality of this high-grade coal, the coal slurry would literally be lost and buried in the slurry ponds, since little or no market value exists for this coal slurry without the adjacent underground mining operation.

The higher surface reclamation fee (over double the underground fee) proposed by the OSM creates a distinct financial disincentive to recover the coal resource in the slurry and prevents the marginal low-grade coal slurry from being an economic alternative in the market. Application of the underground reclamation fee proposed by this Petition will maximize the beneficial use of the coal resource and promote the development and conservation of coal mandated by Congress in the Mineral Leasing Act (30 U.S.C. 209) and the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a).

C. Granting of the Petition Will Minimize Environmental Impacts

By blending the coal slurry with higher-grade coal, United States Fuel Company has decreased the demand for new ponds to contain the coal slurry created in the coal preparation plant. Each slurry pond requires a tremendous commitment of capital investment and land resources. The land committed to the slurry ponds cannot be used for other purposes for many years.

The arbitrary diseconomy resulting from the "reclaimed coal" definition frustrates the goal of preserving the productive capacity of mined lands contained in the Surface Mine Control and Reclamation Act (SMCRA). *Hodel* v. *Indiana*, 1981, 101 S.Ct. 2376, 452 U.S. 314, 69 L.Ed.2d 40. The higher reclamation fee proposed by the Office of Surface Mining creates a significant financial disincentive to use the coal slurry, resulting in increased commitment of land to coal slurry ponds and commitment of valuable coal resources to eventual burial as a part of the reclamation process. Even with advanced reclamation practices, burial of the coal slurry may produce a greater long-term environmental liability than the utilization of the resource in the coal market. Interpretation of the reclamation fee proposed in this Petition will remove an artificial deterrent to the sale of the coal slurry and minimize the land and environmental resources committed to coal slurry ponds, consistent with the goals of SMCRA. *Hodel* v. *Indiana*, supra.

Congress has repeatedly expressed its support of activities such as U. S. Fuel's which maximize the beneficial use of depletable resources in a manner that protects the environment. See e.g., National Environmental Protection Act (42 U.S.C. 4331), Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.). The arbitrary application of the "reclaimed coal" definition to trigger a *surface* reclamation fee on coal slurry produced *underground* creates an administratively-induced cost barrier which prevents these Congressional goals from being achieved to their fullest.

D. The Interpretation Proposed by the OSM Has No Rational Application to the Operations Conducted by U. S. Fuel Company

There is no specific requirement expressed by Congress in SMCRA that "reclaimed coal" recovery be treated as surface mining subject to the higher reclamation fee in all circumstances. A review of the history of the regulation at issue reveals that it was

developed in response to facts and circumstances entirely different than the underground mining operations conducted by United States Fuel Company.

The case law addresses fact situations entirely different than U. S. Fuel Company's operations. At U. S. Fuel Company, all of the coal finds and slurry are recovered as a part of an integrated, ongoing *underground* mine operation. The case law involves the question of whether recovery of coal slurry, without an adjacent coal mine (surface or underground), even constitutes "coal mining operations" within the jurisdiction of SMCRA. *U. S.* v. *H. G. D. & J. Mining Company, Inc.*, (D.C. WV, 1983), 461 F. Supp. 315; *U. S.* v. *Devil's Hole, Inc.*, (D.C. Pa, 1982), 548 F. Supp. 451. That is not the issue posed by U. S. Fuel Company in this Petition. U. S. Fuel Company has a coal mining operation within the meaning of SMCRA. U. S. Fuel has an approved plan of operations and mine permit covering its operations, which includes the surface effects of the slurry ponds as an adjunct operation to this *underground mine*. U. S. Fuel Company has faithfully paid the *underground* reclamation fee on every ton of coal slurry sold. There is no attempt by U. S. Fuel Company to evade its responsibility under the law for its underground mined coal.

The issue at hand is whether the OSM is correct in application of the surface mine reclamation fee to coal slurry which unquestionably originates in an integrated underground mining operation, particularly when the application of such higher reclamation fee precludes the greatest ultimate recovery of the coal resource and unnecessarily frustrates the Congressional goals for environmental protection and maximum utilization of land resources. The failure of the OSM to consider the fact that the subject coal slurry is produced and sold in a permitted, underground mining operation constitutes arbitrary and capricious government action violating the Mineral Leasing Act (30 U.S.C. 181, et seq.), SMCRA (30 U.S.C. 1201, et seq.), NEPA (42 U.S.C. 4331, et seq.), the Mining and Minerals Policy Act (30 U.S.C. 21a), RCRA (42 U.S.C. 6901, et seq.), and the Administrative Procedures Act (5 U.S.C. 501, et seq.).

Relief Requested

U. S. Fuel respectfully requests that the "reclaimed coal" definition contained in 30 CFR 870.5 and the resulting 35¢ per ton reclamation fee not be applied to operations such as U. S. Fuel's, which is a permitted, underground mining operation that incorporates the sale and use of coal slurry in an effort to maximize the use and recovery of the underground coal resource and minimize environmental impacts associated with coal slurry ponds, and that the reclamation fee of 15¢ is the only fee applicable to coal slurry produced in conjunction with active, ongoing, underground mining operations under SMCRA. Petitioner requests that this ruling be made retroactively to include all past coal slurry produced underground by U. S. Fuel and prospectively to coal slurry derived from future underground mining operations conducted by U. S. Fuel.

Petitioner requests that the ruling be made without the need for public hearing since the issues raised by this Petition are based on the specific facts and circumstances of U. S. Fuel's integrated, underground mining operation, which is factually distinct in nature from a "reclaimed coal" operation, and no other parties would be adversely affected by the relief sought herein.

Respectfully submitted this 5th day of July, 1985.

United States Fuel Company.

Robert G. Pruitt, III,

Attorney for United States Fuel Company.

[FR Doc. 85-21447 Filed 9-6-85; 8:45 am]

BILLING CODE 4310-05-M

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CFR CHECKLIST

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A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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